

IN THE CIRCUIT COURT OF
THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION

NORMA R. BROIN, et al.,
Plaintiffs,

vs.

CASE NO. 91-49738
CA 22

PHILIP MORRIS COMPANIES,
INC., et al.,
Defendants.

TRIAL
VOLUME 63

TRANSCRIPT OF PROCEEDINGS in the
above-styled cause before the Honorable Robert Paul
Kaye, at the Dade County Courthouse, 73 West Flagler
Street, Miami, Florida, on Wednesday, July 30, 1997,
at 1:10 p.m.

APPEARANCES:

STANLEY M. ROSENBLATT, ESQ.

SUSAN ROSENBLATT, ESQ.

On behalf of the Plaintiffs

HUGH R. WHITING, ESQ.

JONES DAY REAVIS & POGUE

On behalf of R.J. Reynolds

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EDWARD A. MOSS, ESQ.
ANDERSON MOSS SHEROUSE & PETROS
On behalf of Brown & Williamson
DAVID L. ROSS, ESQ.
GREENBERG TRAURIG, et al.
On behalf of Lorillard
DAVID HARDY, ESQ.
WALTER COFER, ESQ.
and BILLY R. RANGLES, ESQ.
SHOOK HARDY & BACON
On behalf of Lorillard and Philip Morris
KELLY ANNE LUTHER, ESQ.
CLARKE SILVERGLATE WILLIAMS & MONTGOMERY
On behalf of Liggett and Brooke Groups
MICHAEL RUSS, ESQ.
KING & SPALDING
On behalf of Brown & Williamson and American
Tobacco Company
JOSEPH R. MOODHE, ESQ.
DEBEVOISE & PLIMPTON
On behalf of The Council for Tobacco Research
JEFFREY FURR, ESQ.
WOMBLE & CARLYLE
On behalf of R.J. Reynolds
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2	I N D E X
3	WITNESS DIRECT CROSS
4	BILLY WILLIAMS
5	(By Mr. Rosenblatt) 7889 --
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7	PAGE
8	PORTIONS SHOWN OF VIDEOTAPED DEPOSITION OF
9	FREDDY HOMBURGER, M.D. (MAY 28, 1997).....7922
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1 THE COURT: All right. What is new
2 since lunch?

3 MS. ROSENBLATT: What's new is we had
4 agreed--

5 THE COURT: Take your seats, folks,
6 please.

7 MS. ROSENBLATT: --to play--we were
8 trying to fill up the afternoon since the jury is
9 here, and all we really have are a lot of objections
10 to various depositions. There's a three-tape
11 transcript of Dr. Freddy Homburger which was taken
12 in Boston about a month ago. Our direct is fairly
13 brief. There's extensive cross examination. We had
14 intended to edit it and have it much shorter,
15 although our direct, we didn't, because it's not
16 more than 20 minutes and we're just going to play it
17 through. There's a few objections. We'll play it
18 through because that will fill up the time and
19 that's the only thing right now.

20 THE COURT: We have a live witness
21 right now?

22 MS. ROSENBLATT: We have a live witness
23 now.

24 THE COURT: Let's get the live witness
25 now and then we can worry about that.

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1 MS. ROSENBLATT: Okay.
2 MR. COFER: The only thing we thought
3 is the live witness should be fairly brief and I
4 think if we can get the objections out of the way,
5 you wouldn't have to dismiss the jury.
6 THE COURT: How many objections do you
7 have?
8 MR. COFER: I think he has eight.
9 THE COURT: Which witness?
10 MR. HARDY: Homburger on the video.
11 THE COURT: On the video?
12 MS. ROSENBLATT: The one after the live
13 witness. We can do it now or after this live
14 witness.
15 THE COURT: If there's eight, there
16 wouldn't be a problem. I just don't have a
17 transcript.
18 MR. RANGLES: May I approach, Your
19 Honor?
20 THE COURT: Give it to the clerk.
21 MR. RANGLES: I have a highlighted
22 transcript.
23 THE COURT: Thank you. Let's see what
24 is in here. Who is this witness?
25 MS. ROSENBLATT: He's in his 80s. He
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1 at one time had done work for CTR and he's a witness
2 on the issue of fraud as to the Council for Tobacco
3 Research. He's a Ph.D. who had done research for
4 the Council of Tobacco Research.

5 THE COURT: Let's see. Page 14.

6 MS. ROSENBLATT: I think, Your Honor,
7 in the context of our objections, our direct started
8 on Page 9, and Mary Margaret concluded it at Page
9 33. So we didn't have a very long direct. So I
10 think from our direct, they are asking to have some
11 of it excluded.

12 THE COURT: She starts direct on Page
13 9; is that what you're saying?

14 MS. ROSENBLATT: Correct. I was just
15 trying to place it in context in terms of how little
16 there is, really.

17 THE COURT: And these objections
18 basically are legal, so let's just see. The first
19 objection is on Page 14.

20 MS. ROSENBLATT: Do you have one marked
21 up for me? If not, I can probably follow.

22 THE COURT: There's a lot of colloquy
23 in here.

24 MS. ROSENBLATT: There's going--

25 THE COURT: So the question on Page 14,
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1 Line 16, question: "Did that ever change?" And the
2 answer is, "Well, it changed." And he says hearsay,
3 speculation, non-responsive.

4 MR. RANGLES: I am Bill Randles. I'm
5 from Shook Hardy & Bacon. I don't believe I
6 addressed the Court before.

7 THE COURT: Yes, sir.

8 MR. RANGLES: Our objection is not the
9 form of the question but as to the answer. He's
10 just repeating a conversation he had with the
11 scientific director that he had a few years ago.

12 THE COURT: That's what I understand.
13 I have to go back a little bit and find out---

14 MS. ROSENBLATT: Our position is this
15 is germane, placing this in context as to what
16 occurred, and it's part of a very brief examination
17 of this man that we did.

18 THE COURT: Well, let me see. Okay.
19 Well, insofar as he's talking about what he said,
20 but that isn't the substance of what it's all about.
21 Let's see.

22 MR. ROSENBLATT: One of their arguments
23 about why the Council for Tobacco Research was a
24 legitimate organization is this Dr. Little was a
25 great man and came from a cancer background and was

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1 very prestigious. So this is very germane to us.

2 MS. ROSENBLATT: And the question
3 before, he says, "Did you have a lot of respect for
4 Dr. Little?"

5 "I did,"

6 "Did that change?" And he explains in
7 the context it changed.

8 MR. RANGLES: Your Honor, whether it's
9 germane or not doesn't cure the hearsay problem.
10 He's just repeating a conversation he had with the
11 scientist many years ago.

12 THE COURT: If it's going to come in
13 for the fact of what he said and not for the truth
14 of the matter.

15 MR. MOSS: What is the relevance?

16 THE COURT: The question is what is the
17 relevance of it, I would agree, and that's the next
18 question. He said he could do what he pleased. "My
19 sarcophagus is built."

20 MR. MOSS: The relevance is the truth.
21 That's what I was trying to say.

22 THE COURT: The truth of what?

23 MR. MOSS: That's why it's
24 objectionable.

25 THE COURT: I mean, what is the truth
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1 that's allegedly being elicited in here?

2 MS. ROSENBLATT: Well, this has to do
3 with his respect for Dr. Little who was in charge of
4 the Council for Tobacco Research.

5 THE COURT: I don't see any problem
6 with this. I'll overrule the objection as far as it
7 goes down to Line 9. Line 9 and the rest of the
8 colloquy is out.

9 MR. RANGLES: Your Honor, if I may.
10 About the colloquies, we had an agreement previous
11 with plaintiffs' counsel that when the videotape is
12 edited, all the attorney colloquies would come out,
13 but obviously, since we are going to play the whole
14 videotape---

15 THE COURT: Turn it down.

16 MR. RANGLES: Sure. I would like to
17 request that it be turned down.

18 THE COURT: Yes. Just turn the sound
19 down, but you're going to have to go to those
20 places.

21 Who is going to operate the machine? Okay.
22 We'll give you a transcript and you can just turn
23 the sound down.

24 THE VIDEOGRAPHER: Thank you, Your
25 Honor.

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1 MS. ROSENBLATT: This is going to be
2 throughout.

3 MR. ROSENBLATT: There's a lot of
4 colloquy.

5 MS. ROSENBLATT: Certainly during our
6 portion of it, and, you know, Your Honor, in the
7 context, and this is an unusual request, but this is
8 a man in his early 80s who is literally being
9 badgered with cross-examination, with objections,
10 and at some point, you know, I noticed--you know, I
11 watched the video a little last night. His hands
12 were shaking. I think if he were a witness here,
13 the defendants would make their objections and then
14 there would be a--I think in the context of his
15 responses, the fact that there is a two-page
16 objection I think should be presented. It's part
17 of, you know, his---

18 THE COURT: No. I don't think so.

19 MR. RANGLES: Your Honor, the
20 objections are irrelevant, and in terms of
21 badgering, I was the attorney who did the
22 cross-examination. There was no badgering. In
23 terms of his hands trembling, he has a mild case of
24 Parkinson's.

25 THE COURT: I'm not much concerned
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1 about that. I think that none of the colloquy
2 should come in, but what I am concerned about is the
3 constant interruption because of what you say may be
4 colloquy between counsel, and we'll get a
5 disjointed, disruptive tape which would be a lot
6 better edited if we could do it in a hurry. So the
7 question is how much of that stuff is necessary? I
8 mean, this runs through how many pages?

9 MS. ROSENBLATT: Well, our direct is
10 only 27 pages. I don't think--once we get to the
11 cross-examination, there were some objections. They
12 were certainly not as frequent and they were very
13 brief. They weren't for the most part speaking.

14 MR. RANGLES: This simply is not true.
15 They were numerous and many of them were very long,
16 speaking objections.

17 THE COURT: Well, it starts at 11:10
18 a.m. and ends at 4:50. It's not a brief one.

19 MS. ROSENBLATT: I mean in terms of the
20 cross-examination.

21 THE COURT: No. In terms of the whole
22 depo.

23 MS. ROSENBLATT: No, no. It's not
24 brief at all. It's just the---

25 MR. ROSENBLATT: What's brief is
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1 direct.

2 MS. ROSENBLATT: Our direct.

3 THE COURT: I understand, but if they
4 wanted to play all the rest of it, they are
5 entitled.

6 MR. ROSENBLATT: Sure.

7 THE COURT: If they do the whole thing,
8 it's going to run six hours.

9 MS. ROSENBLATT: I guess we'll do part
10 of it and complete it tomorrow.

11 THE COURT: I would much prefer to have
12 it edited.

13 MS. ROSENBLATT: The problem with
14 editing is basically we don't have anything--you
15 know, there are objections to various depositions,
16 but in terms of the jury, we have a half-hour
17 witness and that's it this afternoon.

18 THE COURT: I know. Nobody is going to
19 kick and scream. When we sent them into the case,
20 we didn't tell them they were going to sit around
21 and watch. I think it's a lot easier for them to
22 understand if we don't have to sit there and worry
23 about turning the sound up and down. They worry
24 about what is it you are not putting in.

25 MR. RANGLES: We would prefer to have
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1 it edited. We were just going through this exercise
2 as an accommodation. I think it would make a lot
3 more sense to have it edited.

4 THE COURT: If it's one or two spots,
5 there is no problem, but if you're going to go
6 through a whole series, you know, with the
7 deposition that long, I think it requires some sort
8 of continuity. Why don't we do that, if we can, and
9 get it edited appropriately so we really won't have
10 to worry about it.

11 MR. ROSENBLATT: You know, Judge, as
12 I'm skimming through the cross, the objections---

13 THE COURT: I'll tell you what we'll
14 do. Let's get the live witness on now and then
15 we'll talk about it later. I think it's a lot
16 easier.

17 MR. ROSENBLATT: I don't think there's
18 much.

19 THE COURT: If there isn't that much,
20 we'll see. We have another witness that is standing
21 by doing nothing. Let's get the jury out here.
22 Meanwhile, maybe I can look at it a little bit more.
23 I take it the yellow is what you want to put on or
24 the yellow is the objections?

25 MR. RANGLES: Your Honor, the yellow
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1 are the objections.

2 THE COURT: The objections. Okay.

3 MS. ROSENBLATT: We basically wanted to
4 show the entire 30 pages or so of our direct.

5 THE COURT: What about the cross? Is
6 there anything in the cross that you want to find
7 objectionable?

8 MR. RANGLES: We are very happy with
9 the cross, Your Honor.

10 MS. ROSENBLATT: To fill the time, I
11 wasn't focusing on the cross. I mean, if we are
12 going to have it edited, I may review it tonight.

13 THE COURT: That's part of the
14 testimony. You need to go through it.

15 THE BAILIFF: Bringing in the jury.
16 Jurors entering the courtroom.

17 (The jury entered the courtroom and the
18 following proceedings were had:)

19 THE COURT: Have a seat, folks.

20 All right. You have a witness?

21 MR. ROSENBLATT: Yes, Judge. Mr. Billy
22 Williams.

23 THE BAILIFF: Right this way, sir.

24 Come into the witness box and remain standing to be
25 sworn in, please.

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1 Thereupon:

2 BILLY WILLIAMS

3 Having been first duly sworn, was examined and
4 testified as follows:

5 THE COURT: Have a seat. That box with
6 the red light is the microphone, so if you just talk
7 loud and clear, we will pick you up.

8 THE WITNESS: Okay.

9 THE COURT: Thank you sir.

10 Yes, sir.

11 DIRECT EXAMINATION

12 BY MR. ROSENBLATT:

13 Q. Okay, Mr. Williams. Tell us your name and
14 your address.

15 A. My name is Billy Jack Williams,
16 [DELETED].

17 Q. I think you're the first witness in this
18 case that the jury has seen who's not an MD and not
19 a Ph.D.

20 You're a civilian and you're a Mr., correct?

21 A. Somebody just asked me for a card and I said
22 I'm untitled.

23 Q. You're untitled. Okay.

24 And I'll go through some of your background,
25 but you were a mechanic for National Airlines and

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1 then Pan American Airlines for a number of years,
2 correct?

3 A. Well, yes, I guess.

4 Q. You worked for them?

5 A. Right. Union classification was mechanic,
6 yes.

7 Q. Okay. Now, before you went to work for the
8 airlines, you worked for Westinghouse Electric
9 Corporation?

10 A. Yes.

11 Q. Tell us in a general way what you did for
12 Westinghouse and where that was.

13 A. That was the Westinghouse Radio and TV
14 Division at Metuchen, New Jersey, and when I left, I
15 was troubleshooting and repairing colored TVs when I
16 left. I left in January of '69.

17 Q. And you began working for them when, for
18 Westinghouse?

19 A. April of 1954.

20 Q. Now, there was a period of time when you
21 were in the Air Force?

22 A. Yes.

23 Q. What years were they?

24 A. I went in the Air Force in 1959 and got out
25 in 1963.

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1 Q. And what kind of work generally did you do
2 when you were in the Air Force?
3 A. Airborne navigation equipment repair.
4 Q. And then you were in the Navy for a while in
5 the late '40s?
6 A. Yes.
7 Q. What kind of work did you do while you were
8 in the Navy?
9 A. Control tower operator.
10 Q. Okay. So let me discuss with you your
11 employment by the airlines. When did you first go
12 to work for any airline company, and which company
13 was it?
14 A. My first airline job was at National
15 Airlines, and I went there I believe about June 23
16 of 1969. And they had a reduction in force and I
17 was furloughed on November 2nd or 3rd of 1970.
18 Q. During what time frame did you work for
19 National, excluding the period of time you were on
20 furlough?
21 A. Well, I went back to National as a new
22 higher on December 10, 1973, and I worked for
23 National until Pan American World Airways took over
24 National Airlines in January, I believe, of 1980.
25 Q. So you worked then for National from 1973 to
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1 1980?

2 A. Yes.

3 Q. And Pan American took over National in 1980?

4 A. That's correct.

5 Q. And then I know from just general knowledge
6 there came a time when Pan American went out of
7 business?

8 A. Pan American World Airways went bankrupt on
9 December 3, 1991.

10 Q. Okay. So you worked for National from 1973
11 to 1980, and you worked for Pan Am from 1980 to
12 1990?

13 A. '91.

14 Q. 91. Okay.

15 Now, let's deal with the time frames.

16 First, tell us the kind of work you were doing for
17 National between 1973 and 1980 in general.

18 A. Okay. During that period of time I was in
19 the avionics department, and what we did there was
20 take care of items like the navigation equipment
21 such as the inertial navigation systems, compass
22 systems, communication systems, passenger
23 entertainment systems, and there might be a few
24 others, but that was basically it, electronic part.

25 Q. Now, did your work assignment change during
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1 the early '80s after Pan American took over for
2 National?

3 A. Yes. About a year, a year and a half after
4 Pan Am took over National, I was overaged out. They
5 said they had too many people in avionics, so I went
6 to the electrical department.

7 Q. To the electrical department?

8 A. Right. The aircraft electrical department,
9 yes.

10 Q. Okay. And tell us the difference in your
11 work and the different parts of the aircraft you
12 were involved in when you went from electronics as
13 opposed to when you had been in avionics?

14 A. When I went to the electrical department,
15 then I got into aircraft generators and working the
16 aircraft buses, engine indicating instruments, fire
17 warning and other items out on the engines that I
18 normally didn't work before, and also pressurization
19 of the aircraft. That was a job that the
20 electricians took care of.

21 Q. Now, when we talk about pressurization of
22 the aircraft, what does that mean?

23 A. Well, when we did it maintenance-wise, we
24 could pressurize on the ground and check if we had
25 write-ups, but mainly it means that you have outflow

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1 valves in the airplane; such as the 727 had two
2 outflow valves, round ones, just forward of the aft
3 air stairs in the fuselage. Other airplanes like
4 the DC-10 had a door in the side for an outflow
5 valve.

6 Q. Now, in terms of the equipment that you
7 worked on and in terms of your duties, after you
8 became an electrician during the period of time you
9 were working for Pan Am, what, if anything, did you
10 notice on any of the equipment you were dealing with
11 with respect to secondhand smoke?

12 A. Well, on the 727 with the round outflow
13 valves, I then had to work those, and when we get a
14 pressurization item on that type of aircraft with
15 that type of outflow valve, the common practice was
16 to clean it. We used to have to clean it with a
17 couple of cans of aerosol and throw water on it, and
18 that was because the residue on the outflow valve,
19 that affected the pressurization at times.

20 Q. Now, what was that residue from?

21 A. Well, it smelled like tobacco, and if you
22 got it on your hand, it would make your hand smell
23 like tobacco and it was hard to wash off.

24 Q. And with respect to the sidewalls, what did
25 you notice about the residue of secondhand smoke in

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1 that area, and what are sidewalls? What do we mean
2 by that?

3 A. Well, at times we would take the sidewall
4 panels off the aircraft for maintenance or
5 something, and I would notice then, since I got in
6 the electric, that there was more residue. It was a
7 residue smell like tobacco. If you got it on your
8 hands, it made your hands smell like tobacco. That
9 was on the aircraft wiring itself; some on the 727s.

10 Q. And how would you describe the substance of
11 the residue when it was on your hands?

12 A. It was kind of, I don't know, icky is not a
13 very good word, but it was just--it didn't feel
14 clean. It was kind of a--well, just a residue-type
15 thing.

16 Q. But something that you could actually feel
17 and observe?

18 A. Right. You could feel and observe it and
19 you can smell it.

20 Q. What, if anything, did you notice with
21 respect to aircraft wiring in general with respect
22 to the residue of secondhand smoke?

23 A. Well, it was on some of the airplanes more
24 than others, and some of the airplanes we had, I
25 didn't work that much, but I noticed the residue

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1 more on the 727s and 747s, and also the 737 would be
2 the residue on the wiring.

3 Q. When I think of wiring, I'm thinking kind of
4 that you see wiring in a home. I mean, are you
5 saying that the residue was actually on the
6 electrical wires?

7 A. Yes. What it is, sometimes you have wire
8 bundles.

9 Q. Wire bundles?

10 A. Bundles, right. Airplanes, you know, you
11 might have half a dozen or dozen bundles that run
12 sometimes for the length of the airplane, and the
13 outside wires a lot of times would have the residue.

14 Q. Now, what are sensors?

15 A. Well, there are a lot of sensors, but the
16 sensors that would be involved where you have any
17 secondhand smoke problem would be sensors for cabin
18 temperature probably.

19 Q. Where would those sensors be located on the
20 aircraft?

21 A. Well, they would be located in the duct work
22 and you would sense a temperature in a zone, what
23 you do as a zone, and if you had a temperature
24 write-up that the temperature wasn't right, you
25 might change the zone sensor or clean it, and

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1 sometimes those would have some residue on it and
2 you took the sensor out.

3 Q. How frequently were you involved in doing
4 this kind of work? Was there a daily thing?

5 A. No. My assignment changed. After about
6 another year and a half, Pan Am combined the
7 avionics and electrical, so I ended up, I worked
8 everything. I worked cargo loading one day; I could
9 work on an engine the next day; I could work
10 passenger entertainment system. Just whatever they
11 decided to assign me.

12 Q. Now, during what time frame are we talking
13 about where you would actually see and be able to
14 feel the residue of secondhand smoke on the
15 equipment that you have described, what years are we
16 talking about?

17 A. Well, I think we are talking about '81 to
18 '82, somewhere in that area. From then on, you
19 know, until the time Pan Am went out.

20 Q. So this was a continuing thing beginning at
21 about '81 or '82 to '91?

22 A. Right.

23 Q. Explain to the jury how the wiring worked
24 with respect to the auto pilot system and what the
25 auto pilot system was.

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1 A. Well, the auto pilot system would actually
2 fly the airplane, and on basically it had--well,
3 depending on which one, the 727s had what they call
4 the roll channel which was like this. And then you
5 would have one or more pitch channels which took the
6 airplane like this. And then you would have sensors
7 on the tail to tell the computers what positions
8 that your, you know, services were in. And if you
9 just set the auto pilot on, it would fly and correct
10 itself.

11 Q. Did you observe residue from secondhand
12 smoke on the wiring for the auto pilot systems?

13 A. Well, sometimes, yes, but most of the time I
14 worked on the airplanes, the wiring, we usually had
15 trouble with what would be in the tail where it
16 would be outside the pressurized section.

17 Q. Now, when you would actually clean the
18 sidewall areas, what would you observe as to what
19 would happen to the residue?

20 A. Well, sometimes, if the residue was real
21 bad--wires on an airplane every so often are stamped
22 with a wire number all the way to the length of it,
23 and sometimes we would have this residue on it so
24 bad, you try to clean the residue off to see what
25 wire you had and you take the number off the wire.

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1 So it was a maintenance inconvenience in that
2 particular respect.

3 Q. Now, other than what you've already told us
4 about from the standpoint of the equipment, the
5 electrical wiring, did you notice the residue of
6 secondhand smoke in any other pieces of equipment or
7 any other part of the airplane you haven't told us
8 about?

9 A. Right. Well, on the 747s, we had the same
10 type of, you know, residue on the wiring, but 747s
11 used a passenger entertainment system that was used,
12 a system such as multiplex, and it had a box with a
13 CD coder under each seat of the airplane, and
14 sometimes, you know, you would have residue on those
15 boxes when you would go, and on the cables, when
16 would you go change a box, it would make your hands
17 smell the same way. You know, the tobacco residue,
18 smell like tobacco smoke.

19 And then we had also the 8300s and 8310
20 which we got brand new. As an electrician, I
21 started working sidewall lights, which I never
22 worked as an avionics technician, and that meant
23 when your sidewall lights were out, these were
24 fluorescent, and I would go in to re-lamp, and in
25 the areas after the airplane was new, the lamps

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1 themselves would get the residue on it, and when you
2 go change it, you could smell the residue on some of
3 the lamps and also get that on your hands.

4 Q. Did you ever observe the people whose job it
5 was to clean the airline cabin?

6 A. At times, yes.

7 Q. And what, if anything, did you notice with
8 respect to the residue of secondhand smoke in terms
9 of their cleaning?

10 A. Well, once or twice when I watched them
11 clean sidewalls, that I could see it was dirt--you
12 know, they would get it, but they didn't get quite
13 to clean up the top, and it would run down and they
14 keep doing it. In fact, we used to joke about it
15 sometimes, but it had a residue smell of tobacco on
16 it.

17 Q. Have you described the different types of
18 aircraft that you worked on when you were working
19 for Pan Am during the '80s? I know---

20 A. I worked on the L-1011, but the type of
21 work--those came brand new, and I normally worked on
22 the engines of the baggage loading, and so I wasn't
23 in the cabin very much on those. And Pan Am got rid
24 of them soon after we got them, so I really didn't
25 have that much--you know, I had the experience

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1 working, but it wasn't in the airplane.

2 Q. Did the residue from secondhand smoke from
3 anything you could observe have any practical effect
4 or impact, for example, on the outflow valves or on
5 the workability or effectiveness of the various
6 instruments?

7 A. Well, I think that the only effect that I
8 saw would be on the 727s with the round-type outflow
9 valve because that's where we would get our
10 pressurization write-ups mostly. And on the other
11 outflow valves, they were just designed the way that
12 they weren't a problem. Whether they had any
13 residue or smoke on them or not, I don't know,
14 because I never worked on them that often.

15 Q. And the conditions that you described in
16 your testimony today was basically pretty consistent
17 throughout the 1980s?

18 A. Yes, after I went to the electrical
19 department.

20 Q. Yes.

21 A. I want to make that distinction. Of course,
22 too, now, we also had the 8300 and 8310s, and also
23 sometimes when I dropped a galley panel in those
24 airplanes, and 727s, but they had fluorescent
25 lights, there would be some tobacco residue on those

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1 lamps.

2 Q. And the tobacco residue was visible to the
3 naked eye?

4 A. Right. Well, it was--you know, you had to
5 touch it or smell it to know there was tobacco
6 residue. I couldn't just look at it sometimes.

7 Q. After Pan Am went out of business in 1991,
8 did you effectively retire?

9 A. Yes. That was my last employment.

10 MR. ROSENBLATT: Thank you very much.

11 THE WITNESS: You're welcome.

12 THE COURT: Cross?

13 MR. COFER: Just one moment, Your

14 Honor.

15 Your Honor, we don't have any questions for
16 this witness. Thank you.

17 THE WITNESS: I'm disappointed.

18 THE COURT: Would you step down? Thank
19 you so much.

20 I'm going to have you folks go back in the
21 jury room for just a few minutes.

22 (The jury exited the courtroom and the
23 following proceedings were had:)

24 THE COURT: Have a seat, folks. I'm
25 just trying to figure out how in the world we can
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1 utilize the jury before I let them go in case
2 somebody has an idea.

3 MR. ROSENBLATT: My suggestion would be
4 to start the video, you know, of Dr. Homburger, and
5 I think from the standpoint of the video operator,
6 when we---

7 MS. ROSENBLATT: Fast forward it.

8 MR. ROSENBLATT: Yes, to fast forward
9 it. The objections are not lengthy; as I skim it,
10 objection to form, that kind of thing.

11 THE COURT: Well, there is some
12 colloquy in there which is what the problem is. I
13 don't know how we could do it and get away with it.
14 I don't know about the cross. I only read the
15 direct at this point.

16 MS. ROSENBLATT: I think it's primarily
17 in the direct. In the cross, for the most part,
18 Mary Margaret will say, "Objection to the form."
19 Her voice is not very loud even, and it's really not
20 going to be a problem.

21 THE COURT: There aren't that many in
22 the 34 pages.

23 MS. ROSENBLATT: Right, so.

24 THE COURT: All right. Let's go
25 through those and maybe we can play it today if

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1 you're not going to have any real problem with the
2 cross and if you're going to play the whole thing.
3 Whatever you folks want to do in your cross.

4 Do you need some time to talk about that?

5 MR. HARDY: Well, just our only
6 concern, Your Honor, is we would like to have the
7 cross-examination played in one session as opposed
8 to part of it today and part of it tomorrow. That's
9 all I'm bothered about.

10 THE COURT: I try as best I can to get
11 a witness in on one day, but that isn't always
12 possible. But half today and half tomorrow is no
13 big deal.

14 MR. HARDY: We are talking about a
15 total of six hours with a lot of colloquy.

16 THE COURT: I don't know how much
17 colloquy is involved and how much you want to get
18 in.

19 MR. RANGLES: There's some in the
20 cross, but there is less than there was in the
21 direct.

22 THE COURT: Yes, but I'm talking about
23 the overall cross examination, if you intend to put
24 it all in.

25 MR. RANDLE: Yes, Your Honor.

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1 THE COURT: All right. Let's go over
2 through the objections then in the beginning, where
3 most of it is, and see where we are.
4 MR. RANGLES: We are on the second
5 objection, I believe, Your Honor.
6 THE COURT: I think we were on Page 16.
7 MR. RANGLES: 16, yes, on Line 13.
8 THE COURT: Line 13. Well, it's sort
9 of a reiteration. I sustain the objection.
10 MR. RANGLES: Pardon me?
11 THE COURT: I sustain the objection.
12 Let's see. Down the bottom. That takes us down to
13 Line 70, Page 17.
14 MR. RANGLES: Yes, Your Honor.
15 MR. ROSENBLATT: Well, Judge, I mean,
16 at the bottom of Page 16, he says, you know, he
17 hasn't lost respect for him as a person but for his
18 judgment scientifically.
19 THE COURT: But he said that back on
20 Page 15.
21 MR. ROSENBLATT: On 15?
22 THE COURT: Yes. "I didn't trust his
23 judgment on scientific matters anymore," which I
24 allowed in. So be that as it may. No sense of
25 going over it again. Now we are back on Page 17,
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1 Line 7.

2 MR. RANGLES: It's leading and there's
3 no answer given.

4 THE COURT: Yes.

5 MS. ROSENBLATT: 17, Line 7?

6 THE COURT: Yes, it is leading.
7 Sustain as to leading. Let's see where we go from
8 there. I got Page 21, Line 23. There's an
9 objection as to leading, but when I read the
10 question, the important question is: "Did there
11 come a time?" The answer to that is either yes or
12 no, so what are we reading?

13 MR. RANGLES: I withdraw that, Your
14 Honor.

15 THE COURT: Okay. So now we get back
16 to Page 26, Line 20. That's basically a
17 cross-examination type question. All right. I'll
18 sustain it as to Line 20 through Page 27, Line 5.

19 28, again, this is one of those questions
20 objected to as to form, but the important question
21 is: "Were there other physicians, yes or no"?

22 MR. RANGLES: Yes, Your Honor. I would
23 like to narrow this objection, if I could, and I
24 would like to just object on Page 29 to the question
25 that begins on Line 19.

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1 THE COURT: Line what?

2 MR. RANGLES: Line 19, sir.

3 THE COURT: 19. Okay. So as I
4 understand what you're saying then, Line 14 on PAGE
5 28 through Line 18 on Page 29 is okay; is that it?

6 MR. RANGLES: Yes, Your Honor.

7 THE COURT: Okay.

8 MS. ROSENBLATT: But the only critical
9 question is the one that follows what was just
10 asked. Without that, it makes no sense, what they
11 saw.

12 THE COURT: How about just the answer?

13 MS. ROSENBLATT: Okay. You can leave
14 out the question and just continue with the answer.
15 That's fine. Do you have any problem with that,
16 Stanley?

17 MR. RANGLES: Your Honor, he talks
18 about on Page 28 what he and Dr. Bernfeld, the
19 pathologist, worked in his own lab and concluded.
20 Then throughout the rest of this he does not say who
21 the other pathologists are, the outside pathologists
22 who looked at the slides, but then she says, "They
23 did find cancer, didn't they?" And he said yes.

24 THE COURT: He said, "They saw cancer
25 in many of our slides and in some of them they saw

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1 precancerous lesions."

2 MR. RANGLES: My problem is not the
3 answer. The problem is the leading question.

4 THE COURT: I know.

5 MR. RANGLES: The question comes out
6 and just the answer.

7 THE COURT: The answer can stay. Okay.

8 Next is Page 31, bottom of the page, Line
9 24. And that was a--well, there's no question mark
10 after that statement. It looks like a statement.

11 MS. ROSENBLATT: No. There should be a
12 question mark because the answer is yes.

13 MR. RANGLES: There is no question.
14 She says, "You had," and then the rest.

15 THE COURT: Yes, I realize that. There
16 again, at Line 6, there's another type of question.
17 That is more leading. That's sustained.

18 Let's see what happens on Line 13. "Is this
19 the first time you had ever come up with results as
20 damaging as this for the Council for Tobacco
21 Research?" And I'll overrule that objection as to
22 form.

23 MR. RANGLES: You'll overrule as to
24 Lines 13 through 17?

25 THE COURT: Right.

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1 MR. RANGLES: Sustain as to the prior
2 ones?
3 THE COURT: Yes, sir.
4 MR. RANGLES: Thank you.
5 THE COURT: And I think that does it.
6 MR. RANGLES: Yes, sir.
7 MR. ROSENBLATT: You're taking out the
8 answer on the top of Page 32?
9 THE COURT: 32?
10 MR. ROSENBLATT: Half of the cross
11 becomes academic and that's the whole--"Now, you had
12 other papers which were published with respect to
13 work funded by The Council for Tobacco Research."
14 You know---
15 THE COURT: Yes, but it wasn't an
16 answer to the question. It was a statement. You
17 know, nine times out of ten, all these things are
18 curable if you ask the right question in the right
19 way.
20 MS. ROSENBLATT: It's just that isn't
21 that true?
22 THE COURT: Let the witness testify. I
23 keep telling lawyers this every time I get a chance
24 to. Let the witness talk and don't put words in the
25 witness' mouth. Let the witness say it and you can
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1 never get in any trouble. But you get in trouble
2 when you start putting words in the witness' mouth
3 or try to interpret what the witness says. That's
4 when you get into trouble.

5 MR. ROSENBLATT: Yes, but the question
6 on Page 32, Line 6, I mean, is---

7 THE COURT: Let me see what that is.

8 MR. ROSENBLATT: Half the
9 cross-examination deals with this concept, that the
10 Council for Tobacco Research threatened him.

11 MS. ROSENBLATT: Put pressure.

12 MR. ROSENBLATT: And put pressure.

13 THE COURT: What was his answer to all
14 that on cross? This is direct. You're talking
15 direct. If they brought it up on cross, I'm sure he
16 answered the question.

17 MR. RANGLES: He did answer the
18 question.

19 THE COURT: What did he say? Yes, they
20 put pressure on me, or no, they didn't put pressure
21 on me. Whatever the answer is, the answer is.

22 MR. ROSENBLATT: Yes, but it makes a
23 lot more sense if they hear this on direct.

24 MR. RANGLES: Your Honor, we objected
25 as to form and she elected not to cure.

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1 THE COURT: You'll be surprised how it
2 will all wash out; it really will. That much
3 cross-examination, which is several hundred
4 pages--we stopped on page, what, 36 or something
5 like that?

6 MS. ROSENBLATT: Page 32 was the end of
7 direct, actually. It's almost 31, from 9 to 31.

8 MR. ROSENBLATT: And half of it is
9 objections.

10 THE COURT: All right. So be it. The
11 end of this deposition is on Page 249. That's an
12 awful lot of material in between there. And
13 obviously he answered some questions. All right.
14 Let's run it.

15 MR. RANGLES: Thank you, Your Honor.

16 THE COURT: We'll take a few minutes'
17 break and get that set up.

18 MS. ROSENBLATT: Would it be fast
19 forwarded as to the objections or just quiet?

20 THE COURT: In that case, just turn it
21 down. Turn the sound down. Fast forward, you run
22 past where you want to go.

23 (A brief recess was taken.)

24 MR. COFER: Your Honor, before we bring
25 the jury in, I don't know whether you want to take
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1 this up now or tomorrow morning would be preferable,
2 but I was wondering where we are on Celermajer. We
3 are now in the testimony of Dr. Holbrook.

4 THE COURT: I think that was up to him
5 as to what he wanted to do with it.

6 MR. COFER: He had Dr. Holbrook testify
7 this morning.

8 THE COURT: We left it this morning
9 that he might have to make a choice, and he said he
10 was going to think about it.

11 MR. ROSENBLATT: No. I thought you
12 said you needed to read over some of---

13 THE COURT: No. On the other hand, I
14 said if you're going to get into mechanisms and all
15 of that, then you might have to make a choice, but
16 you didn't really get into it too much.

17 MR. ROSENBLATT: That's right
18 Celermajer is more technical. He's done studies.
19 He's done actual studies, so it's not going to be
20 overlap. Obviously, it's going to be---

21 MR. MOSS: I'm sorry.

22 MR. ROSENBLATT: What we are
23 considering, just so you know it, Susan and I are
24 going to look over his discovery deposition and I
25 questioned him to see whether we can do away with

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1 the necessity of taking his deposition in Australia,
2 because there may be enough in that. So, we'll
3 certainly be in a position to make that decision
4 this week.

5 MR. COFER: And that will be helpful.
6 We have a number of concerns; one, of course, the
7 cumulative concern we raised with respect to all the
8 witnesses and sort of raised it yesterday, and the
9 other is Dr. Holbrook did testify about
10 cardiovascular, talked about his extensive
11 experience and gave his opinions. In addition, the
12 problem of Celermajer is he is in Australia. In
13 order to try to get that deposition taken, it's
14 going to be---

15 THE COURT: I would like to avoid that,
16 if we could.

17 MR. COFER: Exactly. If counsel wants
18 to look at the deposition---

19 THE COURT: I think, based upon the
20 deposition, the length of it that I saw, and
21 actually thumbing through it, yes, it's pretty
22 extensive in some areas, and I don't know what he
23 has to talk to him about in addition. It's 300
24 pages.

25 MR. ROSENBLATT: Yes. So what you're
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1 saying, there's probably enough in there that is
2 usable where we won't have to depose him?

3 THE COURT: Yes. That's what I'm
4 saying. It seems to me---

5 MR. ROSENBLATT: You may very well be
6 right. From our standpoint, he makes an excellent
7 appearance. He wasn't on video, and of course,
8 Mr. Hardy made the point of Dr. Holbrook: "Well,
9 you're not a cardiologist." Celermajer is, in fact,
10 a cardiologist.

11 THE COURT: We are talking substance
12 basically. We are talking about people who are in
13 Australia which is how many thousands of miles away.
14 You don't expect him to be here live?

15 MR. ROSENBLATT: In Australia it's
16 Thursday.

17 MR. COFER: One other thing, Your
18 Honor, and I think it's a good exclusion to see
19 whether it's something they can read.

20 MR. ROSENBLATT: And of course, if I
21 pick out stuff to read, you'll be objecting to that.

22 MR. COFER: All the objectionable
23 parts.

24 The other issue, Your Honor, they mentioned
25 Jesse Steinfeld, taking his deposition again, and I

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1 was wondering whether you guys are still planning on
2 doing that, and if so, when? That's out in San
3 Diego.

4 THE COURT: It's getting a little bit
5 tired of re-taking deposition.

6 MS. ROSENBLATT: No.

7 THE COURT: Supplementing depositions.

8 MS. ROSENBLATT: We were hoping he will
9 come live still. He had some problems. Robin was
10 going to speak to him today. He will let us know.

11 THE COURT: The guy that is ill in
12 California?

13 MR. ROSENBLATT: San Diego.

14 MS. ROSENBLATT: He's had back problems
15 and it's on again/off again, and if he's having a
16 good week, he will come next week.

17 THE COURT: And all the doctors that
18 you know throughout the world, there is nobody that
19 can cure him?

20 MS. ROSENBLATT: I wish. Apparently,
21 it's a serious spinal-type situation, but he does
22 get relief periodically.

23 MR. COFER: The concerns we have in
24 terms of time, we wanted to make sure that if they
25 take Dr. Steinfeld's deposition or if they call him,

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1 they don't call him in our case. We think there is
2 a deposition that they can read. I think they are
3 being unfair. The bottom line is, if they are going
4 to take the deposition in San Diego, we would ask,
5 if Your Honor is going to let them, we ask they do
6 it in their case.

7 MR. WHITING: The other thing I would
8 point out, Steinfeld is cumulative in spades.

9 THE COURT: That I don't know yet.

10 MR. WHITING: It is clear he has
11 testified to lung cancer and heart disease, and
12 nothing else. We now heard three or four times that
13 the '72 Surgeon General's Report was the first time
14 there was any mention of ETS, and he is cumulative
15 of all these points.

16 MR. ROSENBLATT: He is not cumulative
17 that your client wrote a letter to President Nixon
18 to get him fired. That's not cumulative.

19 MR. WHITING: I understand your
20 argument. That is hearsay. We'll talk about that.
21 We will talk about the deposition, but I'm telling
22 you, he's cumulative about his testimony.

23 MR. ROSS: As a matter of fact,
24 Dr. Holbrook this morning testified that he authored
25 the Surgeon General Report for Dr. Steinfeld and he

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1 testified about it, so we certainly don't need
2 Dr. Steinfeld.

3 THE COURT: Well, I don't know. One of
4 those points they just mentioned, which is another
5 point that we need to follow up.

6 MR. ROSS: That is covered in his
7 deposition, so if it's admissible, Your Honor is
8 going to admit it. It's already fully explored in
9 the deposition.

10 MS. ROSENBLATT: Your Honor already
11 ruled we can take his videotape. We are trying to
12 accomplish, if he can't come in, Robin mentioned and
13 she is exploring today doing it where there's the
14 equipment now where you can actually physically be
15 in Miami and he's in a studio there and you're able
16 to do it.

17 THE COURT: Yes.

18 MS. ROSENBLATT: And that would be less
19 of a problem for counsel. We can even do it---

20 THE COURT: You can do the same thing
21 in Australia.

22 MS. ROSENBLATT: We could probably do
23 that. We can do it 5:00 our time, which is who
24 knows. It's like the next day in Australia. But
25 it's three hours earlier for Dr. Steinfeld, and we

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1 could probably have a fairly brief deposition in
2 that fashion and get it done within our case. We'll
3 do it within our case.

4 MR. COFER: That's exactly the point.

5 MS. ROSENBLATT: I'll make sure we do
6 it in our case.

7 MR. COFER: That's exactly the point,
8 and that's why I raise it to the Court's attention.
9 I wanted to make sure that we don't try to skid and
10 run into problems and say, "We did the best we can,
11 but now we have to do it in your case."

12 THE COURT: I guess there are certain
13 things we are going to have to get down either on
14 paper or on videotape. Then we'll have to make some
15 decisions as to whether or not these things are
16 usable, admissible or otherwise. But, I mean, I
17 understand your point. I understand that's a
18 legitimate objection, but we have to see it before
19 we can really see the objections. We may have to
20 still take the depo or videotape it one way or the
21 other.

22 MR. WHITING: We have a depo already.

23 THE COURT: We have the depo, but not
24 the videotape, in case it's used.

25 So, all right. Are you ready with this one?

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1 MR. ROSENBLATT: Yes.
2 THE COURT: You have your cue cards or
3 whatever it is you need.
4 MR. VIDEOGRAPHER: Yes.
5 THE COURT: Okay.
6 THE BAILIFF: Bringing in the jury.
7 Jurors entering the courtroom.
8 (The jury entered the courtroom and the
9 following proceedings were had:)
10 THE COURT: We are going to watch some
11 TV, and I don't know if that is glaring so I guess
12 we'll have to pull those drapes, please. Pull them
13 on this side. That's better. Okay. This is now
14 the cross-examination of Dr.---
15 MS. ROSENBLATT: It's the direct
16 initially and then cross.
17 THE COURT: That's right.
18 MS. ROSENBLATT: It's so brief, the
19 direct.
20 THE COURT: Yes. Right. Now you're
21 getting me confused as to where we are.
22 MS. ROSENBLATT: Sorry.
23 THE COURT: Okay. No. That's okay.
24 This is the deposition of Freddy Homburger, M.D.,
25 right?

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1 MR. ROSENBLATT: Yes.

2 THE COURT: Taken May 28, 1997. It's
3 on tape, videotape, and it may require some work by
4 the operator in editing some of the portions that we
5 have gone over and talked about here. So if during
6 the course of the playing of it he cuts the sound
7 down, those are the portions that we have edited
8 out, and hopefully we will be able to do that
9 smoothly and with no problems. Okay. It takes a
10 while to run this thing. We may even complete it
11 this afternoon. So if you need a break during the
12 presentation, which is--it's 2:20. Yes, it will be
13 about three, four hours. We'll take a break
14 whenever you feel it is necessary. Just let me
15 know. Okay. Yes, sir.

16 (Videotape testimony was published to the
17 jury as follows:)

18 THE VIDEOGRAPHER: My name is David
19 Hammerhand. I represent All-Star Video. The
20 address of the company is 55 Park Avenue West, South
21 Wing, Massachusetts, 02190. The phone number of the
22 company is 617, 331-8881. It is May 28,
23 approximately 11:10. We are here at the offices of
24 Goodwin, Procter and Hoar at 53 State Street in
25 Boston, for the deposition of Dr. Homburger in the

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1 matter of Norma R. Broin, et al., Plaintiffs, versus
2 Philip Morris Companies, Inc., et al, Defendants.

3 This case is currently pending in the
4 Circuit Court of the 11th Judicial Circuit in Dade
5 County, Florida, General Jurisdiction Division,
6 Case No. 91-49738 CA 22.

7 Will the attorneys present please introduce
8 themselves.

9 MS. SCHNEIDER: Mary Margaret Schneider
10 of Stanley M. Rosenblatt, P.A., for the plaintiffs.

11 MR. RANGLES: Billy Randles of Shook,
12 Hardy & Bacon with Philip Morris and Lorillard
13 Tobacco Companies.

14 MR. KLUGMAN: Steve Klugman from
15 Debevoise & Plimpton for the Council for Tobacco
16 Research-U.S.A., Inc.

17 MR. ALDEN: David Alden from Jones,
18 Day, Reavis & Pogue, for Defendant R.J. Reynolds
19 Tobacco Company.

20 MR. NORTHRIP: Robert Northrip of
21 Shook, Hardy & Bacon for Philip Morris.

22 MR. JOHNSON: Peter Johnson of
23 Debevoise & Plimpton for Council for Tobacco
24 Research-U.S.A. Inc.

25 THE VIDEOGRAPHER: And would you swear
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1 in the witness.

2 Thereupon:

3 FREDDY HOMBURGER

4 Having been first duly sworn, was examined and
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MS. SCHNEIDER:

8 Q. Doctor, please state your name.

9 A. My name is Freddy F-R-E-D-D-Y, Homburger,
10 H-O-M-B-U-R-G-E-R.

11 (The videotape presentation was stopped and
12 the following proceedings were had:)

13 THE COURT: Can you get a little more
14 treble in there and cut the base down? Is there any
15 way of doing that, if it's possible? Try it. See
16 what it does.

17 (The videotape presentation was resumed.)

18 A. I was born in Sankt Gallen, Switzerland, on
19 February 8, 1916.

20 Q. Where did you attend medical school?

21 A. I went to medical school in Geneva,
22 Switzerland, and for one year Vienna, Austria.

23 Q. And when did you come to the United States
24 from Switzerland?

25 A. I came to the United States on June 23,
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1 1941.

2 Q. Take us through your training and your
3 career in the United States.

4 A. At the beginning, I came for a one-year
5 fellowship in pathology at Yale. And I stayed for
6 two years and subsequently was stuck after Pearl
7 Harbor for another five years, during which I spent
8 two years at the Thorndike Laboratory of Harvard
9 University Medical School in internal medicine and
10 three years at the Memorial Hospital at
11 Sloan-Kettering Institute in New York in cancer
12 research and at Cornell at the same time as an
13 instructor.

14 I then went to Tufts University in Boston to
15 start a cancer research and cancer control unit in
16 its medical school in 1948, I believe it was back
17 then. And ten years later I left Tufts to found my
18 own organization, Bio-Research Institute and
19 Bio-Research Consultants in Cambridge,
20 Massachusetts.

21 And I became, a few years later, a research
22 professor in pathology at Boston University School
23 of Medicine, which I am still to this day.

24 I am board-qualified in pathology and
25 internal medicine, and I am board-certified in

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1 toxicology; and that was, I believe, in 1982.

2 Q. And while at Tufts, what kind of work did
3 you do?

4 A. At Tufts I started a cancer research unit
5 which consisted of one basic research laboratory
6 where animal research was done at the Tufts Medical
7 Center and two affiliated chronic disease hospitals
8 - one in Cambridge, one in Roxbury - where we had
9 access to advanced cancer patients and experimented
10 with the early phases of chemotherapy.

11 Q. And what kind of work have you done at
12 Boston University?

13 A. At Boston University I was mostly involved
14 in pathology, in teaching. And, of course, all my
15 work at the Bio-Research Institute and Bio-Research
16 Consultants was done while I had an appointment at
17 Boston University.

18 Q. And you still currently have an appointment
19 with Boston University?

20 A. I still am a senior scientist at the Mallory
21 Institute of Pathology at Boston City Hospital and a
22 research professor in the department of pathology of
23 Boston University School of Medicine.

24 Q. Tell us what it was that you became
25 interested in the study of cancer and particularly

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1 causes of cancer.

2 A. Well, at the time when I obtained a position
3 at the Sloan-Kettering and Memorial Hospital, it was
4 very hard for physicians to find positions because
5 it was the end of the war and everybody returned.

6 So, it wasn't really by choice and first
7 preference, but the opportunity was offered me to
8 have a job at Memorial Hospital and Sloan-Kettering
9 Institute and Cornell, and so I took it.

10 And I was fascinated from the very start not
11 only by the problem, which is still with us, but
12 also by the extremely advanced technology that was
13 already available in this highly specialized
14 situation.

15 Q. How did it come about that you started doing
16 work which was funded by the Council for Tobacco
17 Research?

18 A. That is a long story which begins with my
19 friendship with Dr. C.C. Little who became the
20 director of the Council for Tobacco Research after
21 his retirement from the Jackson Laboratory in Bar
22 Harbor, Maine.

23 I needed an advisory council at the Tufts
24 University situation because this was new and
25 very--what is the word--very difficult to integrate

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1 in the exiting system of the university.

2 So, I thought of Dr. Little, who was then
3 very renowned as a geneticist. And he was very
4 happy to serve as an advisor to our unit.

5 And then he suggested that some of our
6 personnel spend a month or two each summer at the
7 Jackson Laboratory in the summer program, and this
8 we did. He asked me in 1948, a year after the big
9 fire in Bar Harbor, to give a talk at his
10 institution.

11 And both my wife and I were fascinated with
12 Maine, bought some land, built a house there in
13 1952, and spent every summer working with the
14 Jackson Laboratory as long as Little was in charge.

15 That is why, when he became the director of
16 research for the Council for Tobacco Research, he
17 chose our organization as one of the first ones that
18 they supported.

19 Q. And what was the Jackson Laboratory? Tell
20 me a little bit about that.

21 A. The Jackson Laboratory was then a pioneering
22 laboratory in research on genetics of mice and also
23 beagle dogs. And Little was probably the world
24 authority on mouse genetics. And cancer research
25 was one of the interests because some of their

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1 strains developed tumors and others did not. And I
2 became very much interested in genetics of
3 experimental laboratory animals by this contact.

4 Q. I take it when you first began doing work
5 funded by the Council for Tobacco Research you had a
6 lot of respect for Dr. Little?

7 A. I did.

8 Q. Did that ever change?

9 A. Well, it changed as he changed in his
10 attitude toward the job he obtained from the Council
11 for Tobacco Research.

12 And when I argued with him that he should
13 insist on having the council put aside a fund in
14 escrow for his salary so he could be free to do
15 whatever he felt was the right thing to do, he said
16 that he liked the position; that he didn't want to
17 risk to lose it; and that he could do what he
18 pleased because, and I quote, "My sarcophagus is
19 built."

20 And from then on, I gradually realized that
21 he was not only a great man but also apolitanistic.
22 And my attitude didn't change as far as he as a
23 friend and human being was concerned, but I didn't
24 trust his judgment in scientific matters anymore.

25 Q. When did you first begin doing research

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1 which was funded by the Council---

2 MR. KLUGMAN: Excuse me. Was there an
3 answer to that question?

4 Q. My question, doctor, is when did you first
5 begin doing research funded by the Council for
6 Tobacco Research?

7 A. That was at the time when Dr. Little retired
8 and became director of the Council for Tobacco
9 Research and was probably in 1956 or so.

10 Q. So, sometime in the 1950s?

11 A. Sometime in the late 1940s or early '50s.

12 Q. Would you tell the jury a little bit about
13 the work that you began doing which was funded by
14 the Council for Tobacco Research?

15 A. Well, the basic idea was to find a disease
16 model in an experimental animal that could be tested
17 for smoke inhalation.

18 In the first instance, we started out with
19 mouse skin paintings, which was at the time the only
20 method to get cancer induced with tars from
21 cigarettes in mice that Lindel did in 1953.

22 And then we began to develop a smoking
23 machine with the intent of being able to expose
24 animals to smoke in a way which approached that to
25 which--in which smokers are exposed to smoke.

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1 And all that started at about the same time
2 and was carried on for many years before the smoking
3 machine was eventually developed to the extent that
4 we thought it was useful in 1969.

5 Q. And what kind of research or describe for
6 the jury the research that you did with the smoking
7 machine?

8 A. And then we tried to see what happened when
9 mice and rats were exposed to smoke. And we found
10 very quickly that both species were very susceptible
11 to the toxicity of smoke and died in relatively a
12 short period of time before it would have been
13 possible to develop cancer.

14 Then, by accident, we got approached by
15 Dr. Whitney, Ray Whitney, who was interested in
16 developing inbred strains of Syrian hamsters. And
17 she became associated with our institution.

18 So, we exposed Syrian hamsters to the smoke.
19 And we found very quickly that the Syrian hamster
20 was much more resistant to smoke toxicity and could
21 tolerate and even seemed to like large doses of
22 smoke inhaled.

23 So, there was an opportunity of developing a
24 system if we could produce cancer or precancerous
25 conditions in the respiratory tract of these

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1 animals, which in the course of years we did.

2 Q. What kind of cancers did the hamsters
3 develop?

4 A. In the susceptible strain, about half of
5 them were carcinomas or precancerous lesions of the
6 larynx, the upper respiratory tract, and some
7 changes in the lungs, which indicated that smoke did
8 reach the lungs, but to a much lesser degree than
9 the other alius of the respiratory tract.

10 Q. What is the larynx?

11 A. The larynx is the proximal end of the wind
12 pipe where the voice is formed.

13 Q. What was the significance in the hamsters of
14 some smoke reaching the lungs with respect to the
15 animal model that you were trying to develop?

16 MR. KLUGMAN: Objection to the form.

17 A. I didn't hear.

18 Q. He just objected to the form. You can go
19 ahead and answer the question, doctor.

20 A. Well, if the smoke had not reached the
21 lungs, there would have been no histological change
22 to be seen. And in all animals that smoked, there
23 were some infiltrations with mononuclear cells in
24 the lungs which showed a mild inflammation and was
25 proof that some of the smoke did reach the lungs.

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1 Q. And how did the hamster as an animal model
2 with respect to the smoking and lungs compare with
3 the human model or human beings?

4 A. Well, I wouldn't like to comment on that.

5 Q. Okay. Did the hamsters have any differences
6 with their respiratory system which you noted with
7 respect to when you compared hamster respiratory
8 systems to humans' respiratory systems?

9 MR. KLUGMAN: Object to the form.

10 A. Oh, yes. The hamster has a very tiny
11 respiratory system being a small animal and humans
12 have a rather wide approach to the lungs through the
13 bronchi.

14 So, the hamster would never get the same
15 relative amount of smoke into its lower respiratory
16 tract that could be expected to enter the human
17 lung.

18 Q. Did there come a time when you reported the
19 results of your finding that you were able to
20 produce cancer of the larynx in hamsters who were
21 smoking to the tobacco industry?

22 A. Yes.

23 MR. KLUGMAN: Objection. Leading.

24 Q. Tell me about that as far as what happened.

25 Doctor, my question is, I would like for you

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1 to tell the court and the jury what happened when
2 you attempted to publish the results of the study
3 where you found cancer of the larynx in hamsters who
4 had been exposed to smoke.

5 MR. KLUGMAN: Objection to the form.

6 A. Well, we wrote the paper and we sent the
7 paper for their approval to the Council for Tobacco
8 Research and its then research director, Robert
9 Hockett.

10 Q. And what happened once you sent the paper to
11 Mr. Hockett?

12 A. They objected to certain terms which we used
13 in that paper.

14 Q. What did they object to and how was that
15 communicated to you?

16 A. There was a letter from Mr. Hoyt who was
17 then the director of the Council for Tobacco
18 Research pointing out that we had not fulfilled our
19 end of the contract which gave the Tobacco Council
20 control of our data and equipment and know-how.

21 Q. And what happened after that?

22 A. After I responded to that letter, Mr. Hoyt
23 suggested that Robert Hockett and a lawyer by the
24 name of Ed Jacob should visit me and discuss this
25 further.

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1 Q. Did you ever have any discussions with
2 Mr. Hockett and Mr. Jacob?

3 A. They came to my summer place in Maine in
4 July or August of 1973 to discuss this matter.

5 Q. What happened when they came to see you in
6 Maine?

7 A. They told me---

8 MR. KLUGMAN: Objection to the---

9 Q. What happened when Dr. Hockett and Mr. Jacob
10 came to see you in Maine?

11 MR. KLUGMAN: Same objection.

12 A. They expressed their disapproval of certain
13 terms we used, namely cancer or microinvasive
14 cancer. And they suggested that we should use only
15 the term pseudoepitheliomatous hyperplasia and not
16 ever the term cancer.

17 Q. Did they say anything else to you?

18 A. I beg your pardon?

19 Q. Did they say anything else to you?

20 A. Mr. Jacob at one point of the discussion
21 said, "You realize that if you were to publish this
22 as you wished to do it, you would never get a penny
23 from the Council for Tobacco Research."

24 Q. What happened after the meeting in Maine
25 when Mr. Hockett and Mr. Jacob came to see you?

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1 A. I can answer that very simply. I changed
2 the paper to conform to their wishes and submitted
3 it to them for approval.

4 Q. And was it approved?

5 A. Yes.

6 Q. And was it published?

7 A. It was published, but when the galleys came
8 back to us, I changed it back to its original form,
9 the way we wanted it to see published, and that's
10 the way it was published.

11 Q. Why did you change it back to its original
12 form?

13 A. Because I believe that the scientific
14 evidence was clearly that cancer had been induced,
15 and therefore, should not be masqueraded as a more
16 benign situation.

17 Q. When you use the word "we" with respect to
18 the research that you did with respect to the
19 hamsters and the cancer that they had of the larynx,
20 who was involved in the research that you were
21 doing?

22 A. It was Dr. Bernfeld, Dr. Russfield and
23 Dr. Soto that did the scientific work with myself.

24 Q. Were there other physicians or pathologists
25 who reviewed the slides that you were commenting

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1 upon in this paper which had cancer?

2 MR. KLUGMAN: Objection to the form.

3 A. Yes.

4 Q. Who were the others that had reviewed the
5 slides?

6 A. I had forgotten some of the names. There
7 were at least six other pathologists who looked at
8 this including Dr. Newburn of MIT, and you have in
9 your records that we gave you the names of some of
10 the others.

11 Q. Okay. You're referring to some of the
12 papers?

13 A. I beg your pardon?

14 Q. You're referring to papers that you have--

15 MR. KLUGMAN: Objection.

16 Q. --which refers to other doctors who reviewed
17 the slides, is that correct, doctor?

18 Whatever, doctor. There were other
19 physicians who reviewed these slides?

20 A. Other physicians, other pathologists
21 experienced in this field who saw these slides.
22 They saw cancer in many of our slides, and in some
23 of them they saw precancerous lesions.

24 Q. Did you present the results of this study at
25 any scientific meeting?

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1 A. Yes.

2 Q. When did you do that?

3 A. I did that in 1974 at Atlantic City at the
4 meeting of the American Association of Pathological
5 Societies.

6 Q. Did you have any press conferences with
7 respect to the findings that you reported at the
8 scientific meeting in Atlantic City?

9 A. I was supposed to have a press conference,
10 but it did not take place.

11 Q. How did that happen?

12 MR. KLUGMAN: Objection to the form.
13 No foundation.

14 Q. You can answer the question, doctor.

15 A. I found out much later in the course of my
16 testimony at the Cipollone case that the public
17 relation's person working for the Council for
18 Tobacco Research had made arrangements to cancel my
19 press conference and that explained why, when I went
20 to the assigned room in Atlantic City for the press
21 conference, there was no press conference.

22 Q. At the time that you went to the room for
23 the press conference, why did you think that there
24 was no press conference?

25 MR. KLUGMAN: Objection.

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1 A. I had no idea. I thought it was one of
2 these mix-ups that sometimes occur.

3 Q. Was it usual or a common occurrence for you
4 to give a press conference on papers?

5 A. Not for me personally. I had given one or
6 two, but for everybody who had anything new to
7 report at that meeting, there usually was a press
8 conference.

9 Q. I'm going to show to you a memorandum which
10 is dated April 22, 1974, which I would like for you
11 to take a look at and tell me if that is the memo
12 that you reviewed during the proceedings of the
13 Cipollone case, which indicated to you what had
14 happened to the press conference.

15 A. Yes, yes. That's it.

16 MS. SCHNEIDER: We'll mark this as
17 Plaintiff's Exhibit No. 1.

18 (The videotape was stopped and the following
19 proceedings were had:)

20 MS. ROSENBLATT: Judge, we have that
21 exhibit to introduce now that was introduced at the
22 deposition.

23 THE COURT: Was it marked by a number
24 there?

25 MS. ROSENBLATT: Yes. It's our No.
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1 1002 from our exhibit list. It was Exhibit 1 to the
2 deposition.

3 THE COURT: Okay. We'll straighten
4 that out when we get to it.

5 MS. ROSENBLATT: Okay.

6 (The videotape presentation was resumed.)

7 Q. And is this the first time that you had ever
8 come up with results as damaging as this for the
9 Council for Tobacco Research?

10 MR. KLUGMAN: Objection.

11 A. Yes.

12 MS. SCHNEIDER: That's all the questions
13 I have, doctor. Thank you.

14 (The videotape was stopped and the following
15 proceedings were had:)

16 MR. ROSENBLATT: This begins the
17 cross-examination.

18 THE COURT: Okay.

19 (The videotape was resumed.)

20 Q. Dr. Homburger, we have met previously and
21 just to remind you, my name is Billy Randles, and I
22 represent Philip Morris and Lorillard Tobacco
23 Companies, and I'll be asking you a few questions
24 this afternoon.

25 Dr. Homburger, I want to review the history
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1 of your research work with the CTR and I'm going to
2 use the phrase CTR even when I refer to the early
3 years when it was known as the Tobacco Industry
4 Research Committee. That wouldn't be confusing to
5 you, will it?

6 A. No.

7 Q. Your first grant from CTR was in about 1955,
8 wasn't it?

9 A. That would be about right.

10 Q. You were one of the very early grantees of
11 CTR, weren't you?

12 A. Yes.

13 Q. And at all times up until about 1969, you
14 had research grants from CTR?

15 A. Yes.

16 Q. And at a later point, 1969 or 1970, you
17 started working by way of contract with CTR,
18 correct?

19 A. I think it was after 1970.

20 Q. All right. Now, in your grant work, you
21 would submit grant proposals and the Scientific
22 Advisory Board of CTR would decide whether or not to
23 fund them; isn't that correct?

24 A. Yes.

25 Q. And the work that you had funded by CTR in
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1 your grant work was important research, wasn't it?

2 A. I believe so.

3 Q. The work that you had funded by CTR all
4 related to smoking and health, didn't it?

5 A. Yes.

6 Q. And all the various grant proposals that you
7 presented and funded by CTR had scientific merit,
8 didn't they, doctor?

9 A. Yes.

10 MR. KLUGMAN: Can I ask Dr. Homburger
11 to speak up just a little bit. I have trouble
12 hearing.

13 THE WITNESS: Yes.

14 Q. With your grant research you were free to
15 conduct your research as you saw fit, right?

16 A. Right.

17 Q. And you were always free to report the
18 results of your research as you thought appropriate,
19 weren't you?

20 A. Right.

21 Q. And you could do with your data whatever you
22 thought should be done, couldn't you?

23 A. Of course.

24 Q. You were free to publish the results of your
25 grant research even when the results could be

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1 considered adverse to the tobacco industry, right?

2 A. Yes.

3 Q. And no one ever interfered with your freedom
4 to conduct or report your grant research, did they?

5 MS. SCHNEIDER: Object to the form.

6 A. Not until later.

7 Q. Not your grant research I'm asking about.

8 A. No, not my grant research.

9 Q. Okay. Just so we are clear?

10 A. Yes.

11 Q. No one ever interfered with your freedom to
12 conduct or report your grant research as you thought
13 appropriate, did they?

14 A. Right.

15 Q. And all grantees, to your knowledge, were
16 free to publish the results of their research; isn't
17 that right?

18 A. I wouldn't know.

19 Q. You don't know of any exceptions to that, do
20 you?

21 A. I don't know about any exceptions.

22 Q. During most of the time that you received
23 grants from CTR, or all the time you received grants
24 from the CTR, Dr. Clarence Cook Little was the
25 scientific director, wasn't he?

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1 A. Not all the time. He died in--I don't
2 remember the exact date, but during his tenure I
3 received grants.

4 Q. And Dr. Little had an excellent reputation
5 in the scientific community both for his ability as
6 a scientist and for his scientific integrity, didn't
7 he?

8 A. Yes.

9 Q. You called him a great man, didn't you?

10 A. Yes.

11 Q. And you believe he was a great scientist,
12 don't you?

13 A. Yes.

14 Q. You also testified that Dr. Little told you
15 that as scientific director of CTR he could do
16 whatever he wanted to do, right?

17 A. Yes.

18 Q. Every member of the CTR Scientific Advisory
19 Board with him you were personally familiar had an
20 excellent reputation in the scientific community,
21 didn't they?

22 A. Yes.

23 Q. Dr. Homburger, you brought a number of
24 documents with you today concerning your
25 relationship with CTR, haven't you?

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1 A. Yes.

2 Q. Dr. Homburger, I'm going to hand you a
3 packet of documents and I would like for you to look
4 through them, and first of all, tell me if these are
5 the documents you brought with you today?

6 I would like to have these marked as Exhibit
7 1.

8 A. Yes. This is what I brought.

9 Q. Those are the documents that you brought
10 today that we discussed yesterday that you had in
11 your files relating to your CTR work?

12 A. Yes.

13 Q. And those documents are authentic documents
14 to the best of your knowledge, aren't they?

15 A. Yes.

16 Q. As a matter of fact, you authored several of
17 those documents, didn't you?

18 A. Right.

19 Q. And those documents are true and accurate
20 reflections of what you wrote at the time, correct?

21 A. Yes.

22 Q. And the first document on top which is
23 called a chronology is a document you testified
24 yesterday you prepared to help refresh your
25 recollection as to what events occurred when,

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1 correct?

2 A. Right.

3 Q. Now, Dr. Homburger, would it be fair to say
4 your memory of the events discussed in those
5 documents was more accurate at the time you authored
6 the document than it is now many years later?

7 A. Oh, of course.

8 Q. All right. Dr. Homburger, I'm going to show
9 you a number of documents today to clarify your
10 recollection, and I want to apologize now if that
11 gets a little tedious. My intent is simply to try
12 and make sure that I understand your position and
13 that you have a chance to review the documentary
14 record consistent with your position, all right?

15 A. Well, I've got to use your approach.

16 Q. Now, Dr. Homburger, you've testified that in
17 a meeting at your home in Maine in July or August of
18 1973, Dr. Hockett insisted that you call the changes
19 to your hamsters' larynxes pseudoepitheliomatous
20 hyperplasia instead of cancer, right?

21 A. Right.

22 Q. And you testified that at that same meeting
23 at your summer home in Maine in either July or
24 August of 1973, Mr. Jacobs threatened you that you
25 could never receive another penny from CTR if you

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1 didn't agree to use the term pseudoepitheliomatous
2 in your draft JNCI manuscript, right?

3 A. Right.

4 Q. And JNCI stands for the Journal of the
5 National Cancer Institute, correct?

6 A. Right.

7 Q. And that was the manuscript that you
8 testified about on direct examination that you
9 testified you had sent to CTR and precipitated this
10 meeting, correct?

11 A. Right.

12 MS. SCHNEIDER: Objection to the form.

13 Q. Am I right about that?

14 A. Yes.

15 Q. And you testified that the only topic of
16 your meeting in July or August of 1973 at your Maine
17 summer home with Mr. Jacob and Dr. Hockett was the
18 two of them trying to convince you to use the term
19 pseudoepitheliomatous hyperplasia in that draft JNCI
20 manuscript, correct?

21 A. Correct.

22 Q. And you stated that you would never use that
23 phrase because it was a meaningless phrase, didn't
24 you?

25 A. Corrects.

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1 Q. And that's your view, it's a meaningless
2 phrase, correct?

3 A. Correct.

4 Q. Dr. Sheldon Sommers is a distinguished
5 pathologist, isn't he?

6 A. Yes.

7 Q. And he reviewed your slides and concluded
8 that your hamsters had not developed cancer, didn't
9 he?

10 A. I don't know whether that was his
11 conclusion, no.

12 Q. Is that what he told you?

13 A. No.

14 Q. He didn't tell you that?

15 A. No.

16 Q. Okay.

17 A. He argued about the terminology.

18 Q. And he argued you should use the term
19 pseudoepitheliomatous hyperplasia; is that correct?

20 A. That's correct.

21 Q. Did he tell you that orally or in writing?

22 A. He wrote me a letter. I don't think we ever
23 discussed it in a direct meeting.

24 Q. Do you have a copy of that letter?

25 A. I don't know.

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1 Q. Do you remember when that letter would have
2 been written?

3 A. It would have been after the meeting with
4 Hockett and Jacob. You probably have it because you
5 have all the copies of letters of the Council for
6 Tobacco Research.

7 Q. Doctor, you testified yesterday that you did
8 not believe there was any way that Dr. Sommers'
9 disagreement with you over whether your hamsters had
10 cancer in their larynx was in good faith because he
11 insisted you use the meaningless term
12 pseudoepitheliomatous hyperplasia in that JNCI
13 manuscript, right?

14 A. Right.

15 MS. SCHNEIDER: Objection to the form.

16 Q. And that is your basis for believing that
17 Dr. Sommers did not have a good faith scientific
18 disagreement with you, right?

19 A. Right.

20 Q. And that's your only basis for believing
21 that, correct?

22 A. No. It's a difference of opinion as to the
23 value of the term pseudoepitheliomatous hyperplasia.

24 Q. And you believe that no reasonable scientist
25 would use that term, don't you?

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1 A. Not for the description of what we saw in
2 the slides.

3 Q. Well, you believe it's a vague and
4 meaningless term in general, don't you?

5 A. I believe that, but that's a personal
6 belief; that there may be others besides Dr. Sommers
7 who think that there is such a thing in certain
8 situations.

9 Q. But you don't?

10 A. I don't.

11 Q. Is that the view of your colleague,
12 Dr. Peter Bernfeld?

13 A. He is not a pathologist.

14 Q. Dr. Peter Bernfeld was your long-time
15 co-researcher in your lab, wasn't he?

16 A. Yes.

17 Q. And he worked with you for years, right?

18 A. Yes.

19 Q. And he designed most of your research,
20 didn't he?

21 A. Yes. A good deal.

22 Q. And he wrote most of your labs, at least the
23 first draft of the research reports?

24 A. Of the reports, yes.

25 Q. And then you would collaborate with him and
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1 finalize them?
2 A. Yes.
3 Q. He was an excellent scientist, wasn't he?
4 A. Yes.
5 Q. And in your opinion he was a careful
6 scientist?
7 A. Oh, yes.
8 Q. And he wrote accurate scientific reports,
9 didn't he?
10 A. Yes.
11 Q. And he wouldn't use meaningless phrases in
12 his report, would he?
13 A. Well, unless he discussed the opinion of
14 Sommers.
15 Q. But he would not characterize---
16 A. He would not use it and he wouldn't know
17 what it meant because he was not a pathologist.
18 Q. Dr. Dontenwill was a scientist with a good
19 reputation in the scientific community, wasn't he?
20 A. Yes.
21 Q. Would it surprise you to know that he used
22 the phrase pseudoepitheliomatous hyperplasia in
23 describing some of the changes to the larynxes of
24 his hamsters?
25 A. That wouldn't surprise me, and I think he
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1 has every right to do so if he believes it's
2 meaningful.

3 Q. But you don't think it's meaningful?

4 A. I don't believe it.

5 Q. But you don't believe Dr. Dontenwill was
6 acting in bad faith or unreasonably by using the
7 phrase, do you?

8 A. No.

9 MS. SCHNEIDER: Objection to the form.

10 A. And he also used the term cancer-induced in
11 his hamsters. He did it before we did it.

12 Q. As a matter of fact, have you ever read a
13 paper by Dr. Dontenwill entitled "Inhalation
14 Carcinogenesis proceedings of a Biology Division,
15 Oak Ridge National Laboratories"?

16 A. Yes. I heard him give that paper.

17 Q. You were there when he gave the paper?

18 A. Yes.

19 Q. Do you remember Dr. Dontenwill stating, "In
20 order to have better control of the induced changes,
21 we differentiated five stages of epithelial changes
22 in the larynx, table six, using the Atlas of Tumor
23 Pathology of the Armed Forces Institute of Pathology
24 as a reference."

25 Do you recall him talking about that?

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1 Are you familiar with the Atlas of Tumor
2 Pathology of the Armed Forces Institute of
3 Pathology?

4 A. I know what it is, yes.

5 Q. Are you aware that one of the categories
6 they list for cellular changes is
7 pseudoepitheliomatous?

8 A. That's probably the case. They believe it
9 meaningful. I believe it's not meaningful.

10 Q. You don't believe they are acting in bad
11 faith--

12 A. No.

13 Q. --or irresponsibly in using the term?

14 A. No, but that's not judging an induced cancer
15 in an experimental animal.

16 Q. That's interesting because I wanted to ask
17 you about Dr. Dontenwill. He was experimenting with
18 smoke inhalation in hamsters, wasn't he?

19 A. Yes.

20 Q. And that was the subject of that paper that
21 you went to listen and talk about?

22 A. So he used the term; so let him use the
23 term. That doesn't mean anything to me.

24 Q. Do you recall Dr. Dontenwill stating, "As in
25 human pathology, a differentiation of so-called

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1 pseudoepitheliomatous changes and the onset of
2 carcinomas in the larynx is very difficult?

3 MS. SCHNEIDER: Objection to the form.

4 A. I don't recall that. That's ridiculous to
5 expect me to recall a thing like that 20 years
6 later.

7 Q. Is that a reasonable statement on his part;
8 that it is difficult to differentiate between cancer
9 of the larynx and pseudoepitheliomatous hyperplasia?

10 MS. SCHNEIDER: Objection to the form.

11 A. How can I think that it's difficult or not
12 difficult if I don't believe it means anything?

13 Q. In the next sentence he stated, "Anyone with
14 long experience in this field and with the
15 above-mentioned atlas or other literature on this
16 subject in mind knows that the criterion for
17 malignancy in the larynx is difficult to explain."

18 Do you agree with him?

19 A. Yes, that's true.

20 MS. SCHNEIDER: Objection to the form.

21 Q. Just make sure we were clear. You agree
22 with him that it's very difficult to explain the
23 criteria for malignancy for cancer of the larynx?

24 A. Yes. Absolutely true. That's why we
25 consulted all these other pathologists.

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1 MS. SCHNEIDER: Objection to the form.

2 Q. Actually, Dr. Bernfeld had used the term
3 pseudoepitheliomatous hyperplasia in reports of
4 research at your own labs for years, hadn't he?

5 A. Well, it's possible, but that would be
6 simply that I overlooked it and he got it from
7 Russfield or Soto or from one of the other
8 pathologists that looked at these slides.

9 Q. Did you routinely review the reports that
10 Dr. Bernfeld prepared?

11 A. Oh, yes.

12 Q. One final question about that article,
13 doctor. I would just like to confirm that you
14 recognize that this is Dr. Dontenwill's article that
15 you read at the time and actually went to hear it---

16 MS. SCHNEIDER: Objection.

17 A. At the time of that meeting, yes.

18 Q. Dr. Homburger, would it surprise you if I
19 told you that I have located eight reports prepared
20 by Dr. Bernfeld of research that is conducted in
21 your lab where he uses the term
22 pseudoepitheliomatous hyperplasia?

23 A. No, it wouldn't surprise me. It was just
24 sloppy editing. Today I would take it out.

25 Q. So you're saying that you were sloppy in

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1 editing his reports?

2 A. Yeah.

3 Q. For leaving that phrase in?

4 A. Yeah. He had no way to know what it was all
5 about. He just took the reports of the pathologists
6 that were given him and put it in as part of his
7 report. He was responsible for the scientific
8 content of the biological point and chemical point,
9 not for the pathology.

10 Q. But it was a meaningless term even if it was
11 placed in reports of your lab; is that correct?

12 A. Yes. You're making a big issue out of a
13 meaningless terminology.

14 Q. Dr. Homburger, I would like to show you a
15 draft report that you transmitted to Dr. Bob Hockett
16 on May 14, 1974.

17 I would like to have that marked as Exhibit
18 3, please.

19 MR. ALDEN: I believe, to make the
20 record clear, it's March 14, not May.

21 MR. RANGLES: The letter says May 14.

22 Q. Do you remember this report, doctor?

23 A. No. I don't remember each of these things.

24 Q. But do you remember your lab generally
25 preparing this report and you sent it to Bob

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1 Hockett?

2 A. Yes.

3 Q. And I would like to call your attention to
4 Page 6 of the report, toward the bottom of the page.

5 Well, now, wait a minute here.

6 Pseudoepitheliomatous hyperplasia is defined as
7 proliferation of the squamous epithelium in which
8 there was a downgrowth of cells into the dermis. So
9 we redefine the term, and this is the way we used
10 it. So that doesn't mean we believe it's meaningful
11 when not explained.

12 Q. Well, Doctor, I'm a little confused. Let's
13 read on, because don't you then go on to say in the
14 next sentence, "Nuclear dysplasia and mitotic
15 activity tended to be more intense than in simple
16 hyperplasia." Correct?

17 A. Where is that question?

18 Q. Page 6, the next sentence.

19 A. Oh, yes. Yes.

20 Q. As a matter of fact, on page -- if you would
21 please look on page 7, midway through that
22 follow-over paragraph, doesn't your report say, "In
23 advanced stages, pseudoepitheliomatous hyperplasia
24 is exceedingly difficult to differentiate from early
25 invasive carcinoma?

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1 A. Well---

2 Q. And that's a report from your lab, authored
3 by Dr. Bernfield, yourself, and Dr. Russfield,
4 right?

5 A. Yes.

6 Q. And in that report you state that
7 pseudoepitheliomatous hyperplasia is very difficult
8 to differentiate from invasive carcinoma, don't you?

9 A. Well, we state that in the sayings that we
10 use pseudoepitheliomatous hyperplasia, here defined
11 as proliferation of the squamous epithelium, in
12 which there was a downgrowth of cells into the
13 dermis, this is true.

14 Q. And it was true that you found it difficult
15 to differentiate pseudoepitheliomatous hyperplasia
16 from cancer?

17 A. Yes, that's true.

18 Q. Dr. Homburger, I want to show you a letter
19 from Dr. Hockett back to you, on June 3, 1974, and
20 see if you remember this letter.

21 THE COURT: Good time to break. Let's
22 take a short break.

23 (The jury exited the courtroom, and the
24 following proceedings were had:)

25 MR. COFER: If you would like a copy to
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1 take home and watch over the weekend---

2 THE COURT: I thought it would be
3 wonderful to do that. I am going to try and say
4 that word.

5 MR. COFER: So is Bill.

6 THE COURT: You dream that word.

7 MS. LUTHER: He practiced it.

8 MS. ROSENBLATT: Judge, for an 81-year
9 old, he's not doing bad.

10 MR. ROSENBLATT: 81, born in 1916.

11 THE COURT: Looks better than I do.

12 (Short break.)

13 THE COURT: Have a seat, folks. Thank
14 you. I realize this is not the easiest thing in the
15 world to endure, but it has to be done. We
16 appreciate your cooperation.

17 That's all right. If you're cold, let me
18 know.

19 JUROR NO. 156: No. I'm not cold. No.

20 THE COURT: All right. I guess we have
21 to do it until it's over.

22 (The video presentation resumed.)

23 A. I remember that very vaguely. That was
24 after our meeting.

25 MR. RANGLES: I would like to mark this
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1 as Exhibit 4.

2 Q. Doctor, Exhibit 4 is a letter from
3 Dr. Hockett to you, dated June 3, 1974, with
4 comments on the paper, draft manuscript, I have just
5 shown you, correct?

6 A. Yes.

7 Q. And he states that "A composite of the
8 suggestions and comments received by CTR staff and
9 consultants is as follows," and he lists a number of
10 comments, doesn't he?

11 A. Yes.

12 Q. Comment No. 5 says, "Page 6, line 18." And
13 that's the portion we just read, correct?

14 A. Yes.

15 Q. The term "pseudoepitheliomatous hyperplasia"
16 was questioned as to its appropriateness?

17 A. Right.

18 Q. Right. So you utilized the term
19 pseudoepitheliomatous hyperplasia in a draft
20 manuscript of a paper concerning your hamster work,
21 right?

22 A. Yes, I did, because they requested me to do
23 it. This was after the meeting with Jacob and
24 Hockett.

25 Q. And then on June 3, 1974, in Exhibit 4,
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1 Dr. Hockett writes back to you and questions the
2 appropriateness of the use of the term, doesn't he?

3 A. Yeah, but it was their suggestion in the
4 first place.

5 Q. So your testimony is it was their suggestion
6 in the first place that you used the term. But on
7 June 3, 1974, they wrote comments back to you
8 questioning the propriety of using the term?

9 MS. SCHNEIDER: Objection to the form.

10 A. Absolutely. Absolutely. It doesn't make
11 sense, but that's what happened.

12 Q. And you thanked Dr. Hockett for his comments
13 on that paper, didn't you?

14 A. I must have.

15 Q. Dr. Homburger, you earlier testified that
16 Dr. Bernfield had used the phrase
17 pseudoepitheliomatous hyperplasia in manuscripts and
18 that when they got by you, that was sloppy editing,
19 correct?

20 A. I would think so.

21 Q. As a matter of fact, Dr. Bernfield had used
22 that phrase long before you say there was a dispute
23 about using this phrase in 1973, hadn't he?

24 A. Probably.

25 Q. That would not surprise you, would it?

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1 A. No.

2 Q. And it wouldn't surprise you if he had used
3 that term repeatedly in draft reports and
4 manuscripts and you just missed it prior to 1973,
5 correct?

6 MS. SCHNEIDER: Objection to the form.

7 Q. I'm sorry. Did you answer?

8 A. Correct. Obviously I wasn't as convinced
9 about this meaning or meaninglessness at that time
10 than I am now.

11 Q. So your views today are different concerning
12 the meaninglessness of the phrase
13 pseudoepitheliomatous hyperplasia than they were in
14 1973?

15 A. I would not use it now. I would call it
16 preinvasive carcinoma or something like that.

17 Q. But you did use it in the 1970s, didn't you?

18 A. I obviously let it go by, yes.

19 Q. And it didn't stick out in your mind, did
20 it, because you didn't pull it out of any of these
21 papers?

22 A. No. I wasn't particularly concerned until
23 they wanted us to call everything
24 pseudoepithelialmatous hyperplasia and not call it
25 cancer.

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1 Q. Do you have any document or manuscript where
2 anyone from CTR ever suggests you using the term
3 pseudoepitheliomatous hyperplasia?

4 MS. SCHNEIDER: Objection to form.

5 A. I think that was all in the discussion.

6 Q. So your testimony in the Cipollone case and
7 in the testimony yesterday that you would never use
8 the phrase pseudoepitheliomatous hyperplasia was not
9 quite accurate, was it?

10 A. Well, it didn't --

11 MS. SCHNEIDER: Objection to the form.

12 A. -- apply to those days long gone, and
13 certainly I wouldn't use it.

14 Q. You wouldn't use it now?

15 A. No.

16 Q. But you did use it then?

17 A. I let it slip by. I didn't use it myself, I
18 don't think.

19 Q. So CTR did not suggest a phrase to you you
20 were unfamiliar with or had never used in papers,
21 did they?

22 A. No. But they suggested it to avoid the term
23 cancer.

24 Q. Contract work and grant work are different
25 methods for supporting scientific research; isn't

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1 that true?

2 A. True.

3 Q. And contracts are a common method of
4 supporting scientific research, aren't they?

5 A. True.

6 Q. There are key differences between contract
7 and grant research, aren't there?

8 A. Yes.

9 Q. And they include such factors as the
10 contracting/funding agency having a higher degree of
11 control over the design of the research?

12 A. Right.

13 Q. And the contracting agency has some control
14 over the freedom of a contract recipient to publish;
15 isn't that correct?

16 A. Right.

17 Q. And that's very common, isn't it?

18 A. Yes.

19 Q. And there's also a difference in the
20 ownership of the results between contract and grant?

21 A. Right.

22 Q. In other words, the contracting agency owns
23 the results of a contract?

24 A. Right.

25 Q. And in a grant, the grant recipient owns the
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1 results; isn't that right?

2 A. Right.

3 Q. And as part of that, any information that
4 can be patented coming out of a contract belongs to
5 the contracting agency, doesn't it?

6 A. Yes.

7 MS. SCHNEIDER: Objection to the---

8 Q. Now, Doctor, you testified that with respect
9 to your publication to JNCI that you put in the
10 phrase pseudoepitheliomatous hyperplasia in your
11 draft to CTR because you say they insisted on it and
12 you took them out of the published version; isn't
13 that correct?

14 A. Yes.

15 Q. And that is your recollection of the events,
16 correct?

17 A. Yes.

18 Q. And you remember taking that phrase out of
19 your paper as clearly as you remember CTR asking you
20 to put it in, don't you?

21 A. Yes, I think so.

22 Q. Doctor, I want to show you an article that
23 you wrote -- I would like to have this marked
24 Exhibit 5 -- and ask you if you recognize that
25 article.

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1 A. Yeah.

2 Q. This is the article you were discussing that
3 you published in the Journal of the National Cancer
4 Institute, correct?

5 A. Yes.

6 Q. And this is the article in which you said
7 CTR insisted that you put in the phrase
8 pseudoepitheliomatous and you refused -- you put it
9 in the original draft. You took it out of the
10 published version, correct?

11 A. Yes.

12 Q. That is your testimony?

13 I would like you to turn to page 1147 of the
14 article, please, Doctor.

15 A. I'm there.

16 Q. Okay. And I refer you to the second column,
17 the first full paragraph. And did you state in your
18 article, "A few larynges of smoke-exposed hamsters
19 also showed chronic inflammation and/or squamous
20 metaplasia of the mucous glands," right?

21 A. Yeah.

22 Q. And then you said, "Chronic inflammation in
23 a few of the controls was associated with slight
24 epithelial thickening but never with true
25 hyperplasia, pseudoepitheliomatous change or

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1 papilloma formation," correct?

2 A. Okay. So I wanted to be nice to the CTR and
3 left it in, in one place.

4 Q. So you did leave it in in this article?

5 A. Must have.

6 MS. SCHNEIDER: Objection to form.

7 Q. So your recollection of the sequence of
8 events of CTR requiring you to put that language in,
9 you putting in a draft and then taking out of the
10 draft, is mistaken?

11 MS. SCHNEIDER: Objection to form.

12 A. It's correct except for one instance here.
13 They wanted me to have it everywhere where it now
14 says cancer.

15 Q. But it was in the paper you submitted,
16 correct?

17 A. Yes.

18 MS. SCHNEIDER: Objection to the form.

19 Q. And your testimony to the contrary earlier
20 was mistaken, wasn't it?

21 MS. SCHNEIDER: Objection to the form.

22 A. No, no, no. I took out a lot of
23 pseudoepitheliomatous hyperplasia and left in one.
24 Those are the facts. I should have said maybe I
25 took it all out except for one.

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1 Q. Doctor, the government sponsors contract
2 research, doesn't it?

3 A. Yes.

4 Q. We're through with that, now, Doctor.

5 Contract research is often characterized as
6 more targeted research than grant research, correct?

7 A. Yes.

8 Q. By targeted, that means the research is
9 directed at a particular scientific issue, right?

10 A. Yes.

11 Q. It's more mission-oriented than grant
12 research?

13 A. Yes.

14 Q. You want to accomplish a given task with a
15 contract, correct?

16 A. Yes.

17 Q. Now, both contract and grant research can be
18 of high scientific merit; isn't that correct?

19 A. Possible, yes.

20 Q. Now, Dr. Homburger, you have testified that
21 CTR switched your research from a grant to a
22 contract because when you reported the results of
23 your hamster inhalation results to CTR, they wanted
24 to control your right to publish; isn't that right?

25 A. Yes.

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1 MS. SCHNEIDER: Object to the form and
2 beyond the scope of the direct examination.
3 Q. That was your testimony to me yesterday and
4 was your testimony in the Cipollone case, wasn't it?
5 MS. SCHNEIDER: Object to the form.
6 A. Yes.
7 Q. Now, Dr. Homburger, you first reported the
8 results of your hamster inhalation research to CTR
9 in an interim report on April 2, 1972; isn't that
10 correct?
11 A. That may be the date. You have it there.
12 Q. Let me show you an item I would like to have
13 marked Defense Exhibit 6. This is entitled
14 "Progress Report for the Current Contract Period and
15 Renewal Application for No. 5B with budget of the
16 project entitled the Determination of the Usefulness
17 of the Golden Syrian Hamster as a Model Animal for
18 Inhalation Studies," correct?
19 A. Uh-huh.
20 Q. You submitted that to the Council for
21 Tobacco Research on April 1972, correct?
22 A. Yes.
23 Q. And that was your first report on the
24 inhalation experiments with your hamsters, correct?
25 A. I don't know. Was it the first?

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1 Q. I'm afraid you have to tell me.

2 A. I don't know. I really don't know, but I
3 know that as early as 1969 we had data on the
4 inhalation effects in hamsters.

5 Q. But the project which you undertook, which
6 you say eventually caused cancer in the larynxes of
7 the hamsters, is this the first report that you
8 submitted to CTR about that project?

9 MS. SCHNEIDER: Objection to the form
10 and I object---

11 Q. Let me ask this another way, Doctor. You
12 don't know of any other earlier reports on your
13 hamster inhalation work that is at issue here today
14 that you submitted to CTR, do you?

15 A. Oh, yes. I submitted data on the effects of
16 the smoking machine exposure in 1969. That means we
17 did work on that perhaps 10 years earlier.

18 Q. So you had done work with hamsters for years
19 but the multiple-week inhalation project---

20 A. That was the last project.

21 Q. That's right. And this was your first
22 report to CTR about that project, wasn't it?

23 A. I think so. About that project?

24 Q. Yes, sir.

25 A. Yes.

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1 Q. Is that right?

2 A. That's basically right, yes.

3 Q. Now, you claim it was Mr. Hoyt from CTR's
4 idea to switch you from a grant to a contract, based
5 upon these results you obtained in 1972, right?

6 MS. SCHNEIDER: Object to the form.

7 A. I don't know whether that was the reason or
8 not. I mean, I have these letters from Hoyt. Where
9 are they?

10 MS. SCHNEIDER: You have them.

11 Q. Just so we are clear, Doctor, you are
12 referring back to some of the documents that you
13 brought today as Exhibit 1, correct?

14 A. Yes. Here is the letter of February 26 from
15 Mr. Hoyt to me where he describes the basic facts of
16 the contract, and then my answer to him where I---

17 Q. Now, that was after -- that was February
18 1973. That was long after you had already been
19 working on the contract; isn't that correct?

20 A. Yes.

21 Q. And just so we are clear, my question to you
22 was: Was it Mr. Hoyt's idea or your idea that you
23 switch from grant to contract research?

24 A. No, not my idea.

25 Q. It wasn't your idea?

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1 A. No.

2 Q. When was the first time you discussed this
3 idea with anyone at CTR, switching from grant to
4 contract research?

5 A. I really don't know.

6 Q. Would it surprise you to learn that you
7 first mentioned the idea of whether your work with
8 CTR should be construed as a grant or a contract on
9 October 1, 1968?

10 MS. SCHNEIDER: Objection to the form.

11 A. That would be a surprise to me. I don't---

12 Q. Dr. Homburger, I am going to mark you --
13 hand you what we would like marked Defense Exhibit 7
14 and you are certainly free to review this whole
15 letter, Doctor, but I am particularly interested in
16 calling your attention to page 3, the last large
17 paragraph there.

18 MR. ROSENBLATT: Judge, could we
19 approach sidebar?

20 THE COURT: Stop it for a minute.

21 (The video presentation was stopped,
22 Counsel and the court reporter approached the bench,
23 and the following discussion was held outside the
24 hearing of the jury:)

25 MR. ROSENBLATT: We are on page 72.

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1 MS. ROSENBLATT: This is a line that
2 really is outside the scope of the very limited
3 direct, talking about whether he was under grant or
4 contract and how it changed, what he said the day
5 before in his deposition. I don't know where they
6 are going with this.

7 Really, it would cut some of this out, and
8 we basically would ask that it's totally outside the
9 scope as to whether it was a contract or a grant,
10 what those circumstances were.

11 THE COURT: How far did that go on?

12 MS. ROSENBLATT: It started a few
13 pages---

14 THE COURT: I think his thrust was they
15 changed and switched from a grant to a contract to
16 prevent him from doing something they didn't want to
17 do.

18 MS. ROSENBLATT: He said that before.
19 He didn't say that on direct.

20 THE COURT: It's already out.

21 MR. RANGLES: The topic of their exam
22 was there was various -- a scheme of CTR to control
23 and suppress Dr. Homburger's research. It's very
24 important for us to get the sequence of events
25 correct. He worked for CTR for decades -- then they

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1 suggested they switch from a grant to a contract, as
2 he testified, because he wanted more money.

3 THE COURT: Let me see where that is.
4 Here he says on page 70 it was not his idea.
5 MR. RANGLES: That's right. I show in
6 a series of correspondence that clear the
7 documents---

8 MS. ROSENBLATT: This never came up in
9 the direct examination. It came up apparently in
10 the discovery depo. I know it already -- I know
11 some of it came out. I just don't know how many
12 pages.

13 THE COURT: Most of this -- we are on
14 page 72. You haven't gotten to 300. Most of this
15 is all outside the scope of direct.

16 MR. RANGLES: This is like unringing
17 the bell. He makes very general broad accusations
18 about CTR and its relationship. It takes a little
19 time to go through the sequence of events and show.

20 THE COURT: So far the only thing I
21 have heard him say at this point on direct was that
22 they were willing to use this phrase rather than
23 cancer, one particular word.

24 MR. ROSENBLATT: One particular
25 incident. One incident.

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1 MR. RANGLES: Your Honor, this is
2 extremely important. Again, one incident is
3 correct. Mr. Rosenblatt is taking this one incident
4 and trying to say this demonstrates CTR is a fraud.
5 Dr. Homburger had a 25-year history with CTR, where
6 he admits he was free to conduct research as he saw
7 fit and free to publish as he saw fit.

8 THE COURT: The next 300 pages---

9 MR. RANGLES: They get into a dispute
10 with Dr. Homburger, CTR does, as to whether he will
11 receive the contract for what became a ten-year
12 inhalation piece of work. And then when he didn't
13 get that money, he said there was nefarious activity
14 and they tried to suppress it.

15 It's very important to establish the
16 sequence of events to show that his account is just
17 uncredible. I know it's tedious. It's the only way
18 to do it.

19 THE COURT: You could have done it by a
20 lot more direct questions than that.

21 MR. MOODHE: The issue of contract did
22 come out in direct examination at page 25 when
23 Dr. Homburger testified that there was a letter from
24 Mr. Hoyt at CTR pointing out we have not fulfilled
25 our end of the contract. And he goes on then to

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1 describe the visit that became---

2 THE COURT: How much do you have to
3 beat a dead horse?

4 MR. MOODHE: It's the core issue.

5 MR. HARDY: Your Honor---

6 MR. ROSENBLATT: The direct examination
7 is 32 pages. The deposition goes on for 249 pages.
8 The focus, the entire focus of the direct is this
9 one article, research. He wanted to use the term
10 cancer. They wanted him to use that long-winded
11 term. A lawyer and someone else came to meet him.
12 You know, one incident.

13 MR. RANGLES: That's not the focus.

14 MR. ROSENBLATT: That does not open the
15 door for them to discuss in detail his entire
16 relationship with CTR over 25 years.

17 MS. ROSENBLATT: On page 88, just to
18 look ahead, they are talking about the dose to which
19 an animal is exposed determining whether smoking
20 caused tumors. We didn't get into any of that.

21 MR. HARDY: There is a method here with
22 plaintiff's counsel. They have made the point for
23 months that the real core of their case is fraud and
24 that CTR is a core part of the fraud. What's
25 happening is they see that Mr. Randles, in lengthy

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1 cross examination, has taken apart the testimony of
2 the witness about the fraud that he testifies to,
3 and they don't want that to happen.

4 Just as critical to them to show fraud in
5 this case, it is critical for us to be able to
6 explain that CTR is not a fraud, that there is a
7 critical difference between a grant program and a
8 contract program, that the man suggested himself the
9 change from one category to another, that the man
10 himself used the term that he says they were trying
11 to make him use, that the man himself published 18
12 times when he says he was restricted. It may be
13 tedious, but it's every bit as much the core of our
14 case as it is theirs.

15 THE COURT: The next 300 pages---

16 MS. ROSENBLATT: That's---

17 THE COURT: What you have done -- how
18 much can you do? I agree with you there, but I
19 don't know. I haven't read all this, so I can't
20 tell you---

21 MS. ROSENBLATT: They are using this
22 witness as a conduit to present evidence. They want
23 to present people -- it's outside the scope.

24 MR. HARDY: Not having done their
25 homework, they are listening to the cross

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1 examination and they don't like it and they want to
2 stop it. That's what's happening.

3 THE COURT: Cross is supposed to be as
4 a result of direct.

5 MR. MOODHE: This is as a result of
6 direct. If somebody comes in and accuses my client
7 of suppressed research, I am entitled to have that
8 issue fully explored and to attack the credibility
9 of this witness.

10 This witness is all screwed up. He has
11 facts wrong, he has dates wrong, and that all goes
12 to whether this jury is going to believe his
13 conclusory testimony given on direct, or if when you
14 look at the facts, and you have him look at the
15 facts, he admits that there are inconsistencies, and
16 his story doesn't hold water.

17 THE COURT: What does he say on direct,
18 the core of his testimony?

19 MR. RANGLES: He said two or three key
20 things.

21 MR. ROSENBLATT: One, he used the word
22 cancer in describing what happened to the hamsters.

23 THE COURT: That's one.

24 MR. RANGLES: He said he was
25 threatened, that if he did---

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1 THE COURT: No. He didn't say he was
2 threatened. That was the word used by the attorney,
3 which was cut off.

4 MR. RANGLES: What did come in is he
5 said "I was told" -- in yours it came in.

6 THE COURT: Just a minute. It says
7 here that if you were ever to publish this, you
8 would never get a penny from the Council on Tobacco
9 Research.

10 MR. RANGLES: That came in.

11 THE COURT: That came in.

12 MR. RANGLES: What he's saying is a
13 lawyer and the assistant scientific director of CTR
14 came and told him if you do it you will never get
15 another dime, and he says, "I did what they told me
16 to do," which is not true, as we have already seen
17 today. And then---

18 THE COURT: First of all, you haven't
19 shown this document, which you said all the rest of
20 the terms, "cancer" was used rather than
21 "hyperplasia." I haven't seen that. I don't know
22 how many times cancer was used as compared to the
23 word pseudoepitheliomatous hyperplasia that was
24 used. He may have used that three times, four
25 times, and used cancer 56 times. I don't know. If

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1 the original document didn't use the word cancer all
2 the time and he did change it, then his answer is
3 correct.

4 MR. RANGLES: That's exactly the point
5 why I have to go through this document of time, to
6 restructure what occurred.

7 Another point that is very important, they
8 said CTR was a fraud. They said it was intending to
9 suppress research, never conducted any viable
10 research. They have one witness in this case that
11 ever got a dime from CTR and that's Fred Homburger,
12 and we are entitled to use, as a fact witness to
13 show how CTR conducted business---

14 THE COURT: You can't go outside the
15 scope. You are trying to use their witness for your
16 purposes.

17 MR. RANGLES: The only opportunity I
18 have for this witness is at the deposition. He's in
19 poor health.

20 THE COURT: Where is the rule written
21 you can't call a witness for your side?

22 MR. RANGLES: Your Honor, he can't
23 travel, which is the reason we did it by videotape.

24 THE COURT: You could have also taken
25 another deposition in your favor, as the defense.

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1 MR. HARDY: We didn't---

2 MR. HARDY: Mr. Rosenblatt is going to
3 try to put the witnesses on the stand who tried to
4 talk about what this means.

5 THE COURT: I just question -- I mean,
6 I just question why you need 300 pages of any
7 deposition in any case whatsoever to get to a point
8 that could probably be done in three or four pages.

9 MR. RANGLES: It could be -- if I asked
10 the witness whose idea was it to change from grant
11 to contract and he says it was mine, oh, it wasn't
12 mine, I think I can---

13 THE COURT: How many pages of
14 correspondence do you have?

15 MR. RANGLES: I showed him about three.

16 THE COURT: How long does it take to do
17 that? 300 pages?

18 MR. RANGLES: Well, if you look over
19 here---

20 THE COURT: What is the rest of the
21 deposition about?

22 MR. RANGLES: The rest of the
23 deposition is about -- for example, this sequence of
24 events about the contract, his own lawyers suggested
25 that CTR owned the results. Then we take him

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1 through did he find cancer in his hamsters, and
2 there is a real question as to whether he found it.
3 He says there is a legitimate scientific controversy
4 and the question and the evidence is it does. And
5 CTR's people had a reasonable basis---

6 Finally we go through the sequence of events
7 he claims surrounded his meeting with Hockett and
8 Jacob, where they threatened him and threw the
9 correspondence out. That is just not -- they were
10 talking about something else at this meeting. His
11 memory of this came in about 1988, and that's the
12 only way I can get into that is by showing the
13 documents at the time.

14 THE COURT: I haven't read this thing.
15 It's monstrous in size. So I guess there's nothing
16 I can do about it. I can't figure out what's
17 objectionable other than the length of it.

18 MR. HARDY: Your Honor, it puts us -- I
19 don't understand how we can -- how on the one hand
20 plaintiffs' counsel can call us liars and fraud in
21 connection with the way we treat a man who is doing
22 a research project in connection with CTR and then
23 say that we cannot explain it in a cross examination
24 because it's too lengthy.

25 THE COURT: I am just saying, why did
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1 it take so long and so tedious a process?

2 MR. MOODHE: There is one further
3 point.

4 MR. ROSENBLATT: You have witnesses on
5 your case from CTR that are going to say---

6 THE COURT: First of all, let me get
7 the ground rules. This is perfectly legitimate, for
8 them to go explore this area. I have no problem
9 with that. My only problem is, why does it take
10 forever?

11 MR. MOODHE: Your Honor, if I may---

12 THE COURT: I don't know that until I
13 hear it, so I guess I have to proceed and find out.

14 MR. MOODHE: Yes, Your Honor.

15 MR. RANGLES: If the witness answers no
16 to a question and the answer is yes and 10 pages
17 later he says yes, I have to take him through that
18 process. The point is---

19 THE COURT: I think we overstate our
20 cases and I will tell you one thing. Most lawyers
21 overtry their case. So whatever that may be. But
22 we will just proceed where we are going and see
23 where we go.

24 MR. ROSENBLATT: You might want to skip
25 the rest. There will be plenty left.

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1 THE COURT: Oh, yes, there will be
2 plenty left.

3 (Thereupon, the following proceedings were
4 held within the hearing of the jury:)

5 THE COURT: Pick it up from where we
6 stopped.

7 (The video presentation resumed.)

8 Q. You are free to do so.

9 A. Well, I don't think this was the first
10 suggestion. I mean, I agreed with Hoyt that the
11 contract might be a better form because it was more
12 expensive to do these long-term inhalation studies
13 than anything we had done before, but I don't think
14 it was the first time we discussed that.

15 Q. Let me just make sure we are clear. We are
16 now discussing an October 1, 1968 letter that you
17 sent to Mr. Hockett, Dr. Hockett, who is the
18 associate scientific director at CTR, correct?

19 A. Yes.

20 Q. In this letter, you, among other things, you
21 state: "We discussed certain administrative aspects
22 of this contract. You point out within CTR this
23 contract was actually being handled as a grant," and
24 then you go on for several reasons to explain why
25 you think it would be better to handle this as a

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1 contract.

2 A. Yes. That's true.

3 Q. And one of the reasons was, as you were just
4 saying, that this was going to be a very expensive
5 project and typically funding agencies spend more
6 money on a contract than they do a grant, correct?

7 A. Right.

8 Q. And you wanted them to undertake a
9 large-scale contract with you, didn't you?

10 A. Right.

11 Q. And you think that there may have been prior
12 discussions, but at least as early as October 1,
13 1968, you were discussing the possibility of
14 entering into a contract with CTR to do this work?

15 A. Yes.

16 Q. And this was, of course, long before you had
17 any results of your hamster inhalation experiment,
18 which did not start until 1970, correct?

19 A. Yes, but there was a lot of work done on
20 that smoking machine with hamsters long before,
21 which makes -- told us that it was feasible, and all
22 of that was done long before we had the contract.

23 Q. That's right. You had worked with hamsters
24 and inhalation machines for several years?

25 A. Yes.

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1 Q. But you hadn't undertaken --

2 A. The long-term---

3 Q. -- the long-term inhalation experiment,
4 correct?

5 A. Right.

6 Q. I'm sorry. I talked over you. Let me try
7 that again. Although you had worked with hamsters
8 and the inhalation machine for several years, you
9 had not yet undertaken the long-term inhalation
10 experiments in which you eventually concluded that
11 some of your hamsters got cancer?

12 A. Correct, correct,

13 Q. You didn't start that until sometime around
14 1971 or 1972, did you?

15 A. Well, earlier, a little earlier maybe
16 because we had to go for two and a half years. '71.

17 Q. As a matter of fact, Dr. Homburger, not only
18 did you write suggestions to CTR on October 1 of
19 1968, that they enter into a contract with you, you
20 actually prepared a draft contract which you
21 transmitted to CTR, didn't you?

22 A. I may have done that.

23 MR. RANGLES: I would like to have this
24 marked as Exhibit 8.

25 A. Dr. Homburger, I would like to show you what
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1 has been marked as Defendant's Exhibit 8 and see if
2 you can confirm that this is a letter that you sent
3 to Dr. Vince Lisanti at the Council for Tobacco
4 Research on December 23, 1969.

5 Q. Dr. Homburger, is this document, as I
6 described it to you, a December 23, 1969, letter
7 from you to Vince Lisanti at the Council for Tobacco
8 Research --

9 A. Yes.

10 Q. -- stating: "Enclosed is a draft of an
11 agreement between the Council for Tobacco Research
12 and Bio-Research Consultants for inhalation studies
13 in Syrian hamsters?

14 A. Obviously true, yes.

15 Q. So you sent a draft contract to CTR on
16 December 23, 1969 for this work?

17 MS. SCHNEIDER: Objection to the form.

18 A. Let me draw your attention to another letter
19 of mine to Mr. Hoyt of March 2, 1973.

20 Q. Actually, I plan to talk to you about that
21 letter a little bit later, if that's all right,
22 Doctor.

23 A. All right.

24 Q. I would like to take this chronologically.

25 Furthermore, you actually submitted this

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1 draft contract to your lawyer, who made changes to
2 it, and you sent those changes to CTR, didn't you?

3 A. I don't remember any of that.

4 MR. RANGLES: I would like to have this
5 marked as Defendant's Exhibit 9.

6 Q. Dr. Homburger, is this a letter from you to
7 Dr. Lisanti at the Council for Tobacco Research,
8 dated January 6, 1970, which the cover letter
9 states: "Enclosed are the comments recently received
10 from our counsel regarding the contract form of CTR.
11 We hope that his suggestions will be acceptable to
12 your lawyers."

13 A. Yes.

14 Q. I would like to call your attention in
15 particular to page 2 of your lawyer's letter to you,
16 dated January 2, 1969, which is part of Exhibit 9.

17 Dr. Homburger, I would like to call your
18 attention to page 2, point No. 5 that your lawyer
19 makes, and he states: "We note that there is no
20 language in your proposed draft with regard to the
21 fact that the findings made by consultants in the
22 course of this study belong to the Council,
23 C-o-u-n-c-i-l. You may wish to refer to the
24 Council's proposed contract and give the Council the
25 assurance with regard to this point." Is that what

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1 it says?

2 A. Yes.

3 Q. So your lawyer was pointing out to you in
4 1970, and you transmitted his comments to CTR, that
5 they needed to make sure in their contract with you
6 that they were clear they owned the results, right?

7 MS. SCHNEIDER: Objection to the form.

8 THE COURT: Hold on.

9 (The video presentation was stopped, Counsel
10 and the court reporter approached the bench, and the
11 following discussion was held outside the hearing of
12 the jury:)

13 MR. HARDY: I do want to be sure the
14 Court is clear that the reason this started this way
15 is because plaintiffs' counsel designated the whole
16 deposition, including the whole cross, and all we
17 did was accept that designation. But my suggestion
18 for -- that's exactly what happened. We
19 designated---

20 THE COURT: Whatever.

21 MR. HARDY: Here's my proposal. We
22 will edit this tonight and cut down as much of it,
23 cut out of it as much as we can. Billy Randles
24 tells me he might be able to take as much as an hour
25 out of it from this point out.

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1 MR. ROSENBLATT: The hour, if it helps
2 us.

3 MR. HARDY: You don't have to accept
4 the deletions. I am just---

5 MS. ROSENBLATT: 90 percent of this is
6 outside the scope, so what I am going to do is read
7 through it and object. Mary Margaret even argued
8 outside -- because we didn't ask any of these
9 questions. It should have been a half hour of
10 cross, not four hours.

11 THE COURT: Why don't you do that, if
12 we can.

13 MR. HARDY: What I don't want to end up
14 in is a situation where we end up doing something
15 else tomorrow in the middle of this deposition, so
16 we would need to start court, get the matter
17 resolved, finish the deposition.

18 MR. ROSENBLATT: That's what you want
19 to do, finish this?

20 MR. HARDY: Sure.

21 MR. ROSENBLATT: That's what he's
22 saying.

23 MR. HARDY: Finish this deposition
24 before Bookstein or anybody else testified.

25 THE COURT: Why don't you do that? If
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1 you want to take the time tonight to go over it and
2 cut it out, that would be fine. Really, most of it.
3 MR. HARDY: We'll shorten it up as much
4 as we can.

5 THE COURT: Tell you another reason.
6 You have already lost them on this stuff. They
7 can't remember this stuff. It's one thing for you
8 to sit down and read it because it's in black and
9 white. And they are not going to understand.

10 MR. HARDY: I don't quarrel with that.
11 My problem is that I know one of the things
12 plaintiffs' counsel is going to do is ask other
13 expert witnesses to comment on the significance of
14 this testimony, his deposition, and we have to be in
15 a position to be able to question those same
16 witnesses about matters that are in here, and we
17 can't do it if they are not in evidence.

18 THE COURT: Take out the salient
19 portions of it and see---

20 MR. HARDY: We'll try it.

21 THE COURT: The rest, there's a lot of
22 fluff in there.

23 MR. HARDY: We will try to do that.

24 THE COURT: Are we at a convenient
25 place to break or is this---

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1 MR. HARDY: Where are we in connection
2 with a place to break?

3 MS. ROSENBLATT: Talking about his
4 attorneys, totally outside anything earlier about a
5 contract that---

6 THE COURT: "So, your lawyer was
7 pointing out"---

8 MS. ROSENBLATT: Which is totally
9 outside the scope.

10 MR. RANGLES: That's not outside the
11 scope. He said they wanted him in contract so they
12 could control him.

13 THE COURT: Oh, come on.

14 MR. RANGLES: His own lawyer
15 suggested---

16 THE COURT: I am not getting into that.
17 None of that is admissible, that a lawyer did or
18 said---

19 MR. RANGLES: He said it to CTR. There
20 is no privilege. The lawyer edited the contract.

21 THE COURT: Whether it is or isn't is
22 not necessary. I am trying to explain this to you.
23 To make your point, it is not necessary to go
24 through all this stuff. This is the way you are
25 losing it. It's a fine job of cross examination,

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1 you get a star, but, you know, of what value is it?
2 That's what I am looking at.

3 MR. HARDY: For instance, if the man
4 says a lawyer for the doctor tried to suppress his
5 work---

6 THE COURT: You can get it out without
7 having to go through that much.

8 MS. ROSENBLATT: The only value to
9 plaintiffs is it showed that somebody objected.

10 THE COURT: Where did we stop? So the
11 lawyer pointed out---

12 MS. ROSENBLATT: What the lawyer was
13 pointing out to him about something that occurred
14 three years before

15 MR. ROSENBLATT: You gave me the signal
16 to come sidebar. That's where we stopped.

17 THE COURT: I don't know where it was.

18 MR. ROSENBLATT: He will tell me
19 exactly.

20 THE COURT: Find exactly where it is.

21 MR. COFER: Mr. Moss insists we play
22 the whole thing.

23 MR. MOSS: Would I be out of order? I
24 haven't been up here all afternoon.

25 MR. COFER: I have been watching the
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1 jury and I think they find it scintillating -- or
2 something like that.

3 THE COURT: Tell you what. I will
4 probably allow that to happen if Moss can pronounce
5 the word without stuttering.

6 MR. COFER: How many times does he get?

7 THE COURT: Three.

8 MR. MOSS: Once again, I flunked.

9 (Thereupon, the following proceedings were
10 held within the hearing of the jury:)

11 THE COURT: What page and line are you
12 at?

13 MS. ROSENBLATT: 80, line 5. That's
14 the last thing we heard.

15 THE COURT: Right. That's a good place
16 to stop.

17 MR. ROSENBLATT: Going into another
18 exhibit.

19 MR. HARDY: Can we go to page 83, line
20 1?

21 THE COURT: You want to go to 83, line
22 1? We can do that. That's not that far. If that's
23 a good spot for you.

24 MR. HARDY: That's a good spot.

25 MS. ROSENBLATT: Judge, I think that's
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1 part of the lawyer---
2 THE COURT: Is that? I have to read
3 this.
4 MR. HARDY: If it's cross examination,
5 we would like to pick the spot.
6 COURT REPORTER: Excuse me?
7 THE COURT: I'm just mumbling. Just
8 remember, friends, if you don't have a sense of
9 humor, it ain't worth it.
10 Okay. Let's see. There's a lot of colloquy
11 in here, too, but that one reference on page 81, I
12 am not really that much concerned with, considering
13 the total context of it. So page 83.
14 MR. MOODHE: 83, line 6.
15 THE COURT: Line 6. Or line 4, I
16 guess.
17 MR. MOODHE: 4.
18 THE COURT: Let's run it to that frame
19 and cut out the colloquy. The colloquy comes after
20 it, doesn't it?
21 MS. ROSENBLATT: It's actually---
22 THE COURT: Run it to that point.
23 VIDEO TECHNICIAN: 83, line 4?
24 THE COURT: Yes.
25 VIDEO TECHNICIAN: Play it here?
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1 THE COURT: From here to 83, line 4.
2 (The video presentation resumed and the
3 following proceedings were had:)

4 MR. RANGLES: I would like to mark this
5 next exhibit, Exhibit 10.

6 Q. Dr. Homburger, on June 19, 1970, you sent
7 Exhibit 10, what is now marked as Exhibit 10, to
8 Mr. Hoyt, who was the executive director of the
9 Council for Tobacco Research, a cover letter
10 enclosing two signed copies of the agreement with
11 Bio-Research Institute, contract No. 4, and
12 Bio-Research Consultants, contract No. 5, didn't
13 you?

14 A. That's what it seems to be.

15 Q. And this was the contract that covered your
16 animal, your hamster inhalation experiments that are
17 the subject of your testimony today; isn't that
18 correct?

19 MS. SCHNEIDER: Object to the form.

20 A. Yes.

21 Q. I'm sorry. I think you all may have talked
22 over each other. Is your answer to that "Yes"?

23 A. Yes.

24 Q. So, Dr. Homburger, so we are clear, you
25 suggested, at least as early as October 1968, that

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1 you performed hamster inhalation work by means of
2 contract with CTR, didn't you?

3 A. Yes.

4 Q. And you prepared the contract, didn't you?

5 A. Yes.

6 Q. And your lawyer suggested changes to the
7 contract, including CTR's ownership of the findings,
8 and you forwarded those changes to CTR, didn't you?

9 A. Yes.

10 Q. And you signed the contract and sent it to
11 CTR on June 19, 1970, didn't you?

12 A. Yes.

13 Q. But you didn't send CTR a report on the
14 results of your hamster inhalation work under this
15 contract until April 2, 1972, did you?

16 A. I don't know the date. You have it here.

17 Q. Could we see the exhibits, please?

18 Q. I'd like to refer you back to Exhibit Number
19 6, Doctor, that we talked about earlier today.
20 That's your first report to CTR regarding the
21 results of this inhalation work, isn't that correct?

22 A. Yes.

23 Q. So, you had had a contract with CTR to do
24 this work for nearly two years when you finally
25 submitted the results to CTR, correct?

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1 A. Yes.

2 Q. So, the fact that your CTR funding for the
3 animal -- hamster inhalation work was no longer a
4 grant but became a contract on June 19, 1970 had
5 nothing to do with the results of the inhalation
6 work because the work hadn't been done yet, had it?

7 A. I don't understand you.

8 Q. Let me try again. The fact that you were
9 doing this research by means of contract instead of
10 a grant was not at all connected to the results of
11 the work which were not even begun yet?

12 A. That's correct.

13 Now may I make reference to my letter of
14 March 2nd?

15 Q. I promise you I'm going to get to that
16 letter.

17 A. I hope so.

18 (The video presentation was stopped and the
19 following proceedings were had:)

20 THE COURT: Okay. All right. We have
21 concluded that that's enough for today, which you
22 are very sorry. We will resume tomorrow 9:00, same
23 thing, and try to finish as early as we can. We
24 have to finish this deposition, but one of the
25 reasons we are going to stop it is that the lawyers

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1 are going to go over the rest of this deposition to
2 pare it down as best they can so we don't have to
3 hear the whole thing, and we'll do the very best we
4 can to do that to make it somewhat shorter, and they
5 are going to be working all night long on this.

6 So, all right, folks. Thank you very much.

7 (Whereupon, the jury retired from the
8 courtroom and the following proceedings were had:)

9 THE COURT: This equipment, you are
10 going to take it or leave it?

11 VIDEO TECHNICIAN: I'm going to leave
12 it.

13 THE COURT: The doors will be locked.
14 There is only one or two keys in our possession.

15 VIDEO TECHNICIAN: Should I just leave
16 it set up?

17 THE COURT: Leave it set up the way it
18 is, so if we have to excise certain portions of this
19 thing, we could either do it as we have been doing
20 it by turning down the sound or, if there's a long
21 stretch, we could fast-forward.

22 So, we don't really have to physically edit
23 it. We don't have time for that anyway. But you
24 will have some presentation tomorrow along with what
25 you want to do.

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1 MS. ROSENBLATT: We'll see if there is
2 any part of it --

3 THE COURT: You will have to meet
4 before nine, I suppose.

5 MS. ROSENBLATT: If they finish it
6 tonight, they could fax it to our office. We'll be
7 there late. I mean, I'll work on my end -- depends
8 on what they want.

9 I just want to clarify. I want to make sure
10 whatever that letter he's talking about, that that
11 gets in.

12 THE COURT: Did it ever get in, by the
13 way? Did it ever get in?

14 MR. RANGLES: Yes, of course.

15 MR. COFER: We objected to all that,
16 though.

17 MS. ROSENBLATT: That's what Walt
18 always says: Well, we'll get to that later, in a
19 minute, in a minute.

20 MR. ROSENBLATT: And he never does.

21 MR. COFER: I forget.

22 THE COURT: I'll run through these
23 things the best I can tonight.

24 MR. HARDY: Mr. Randles will have some
25 kind of proposal to Susan within the next three

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1 hours or so.

2 MS. ROSENBLATT: Great. Appreciate it.

3 THE COURT: Okay. He's the one most

4 familiar with it, I'm sure.

5 (Court was adjourned at 4:30 p.m.)

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